

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 687.

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JOHN McNAMARA, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR  
THE SOUTHERN DISTRICT OF NEW YORK, ET AL.

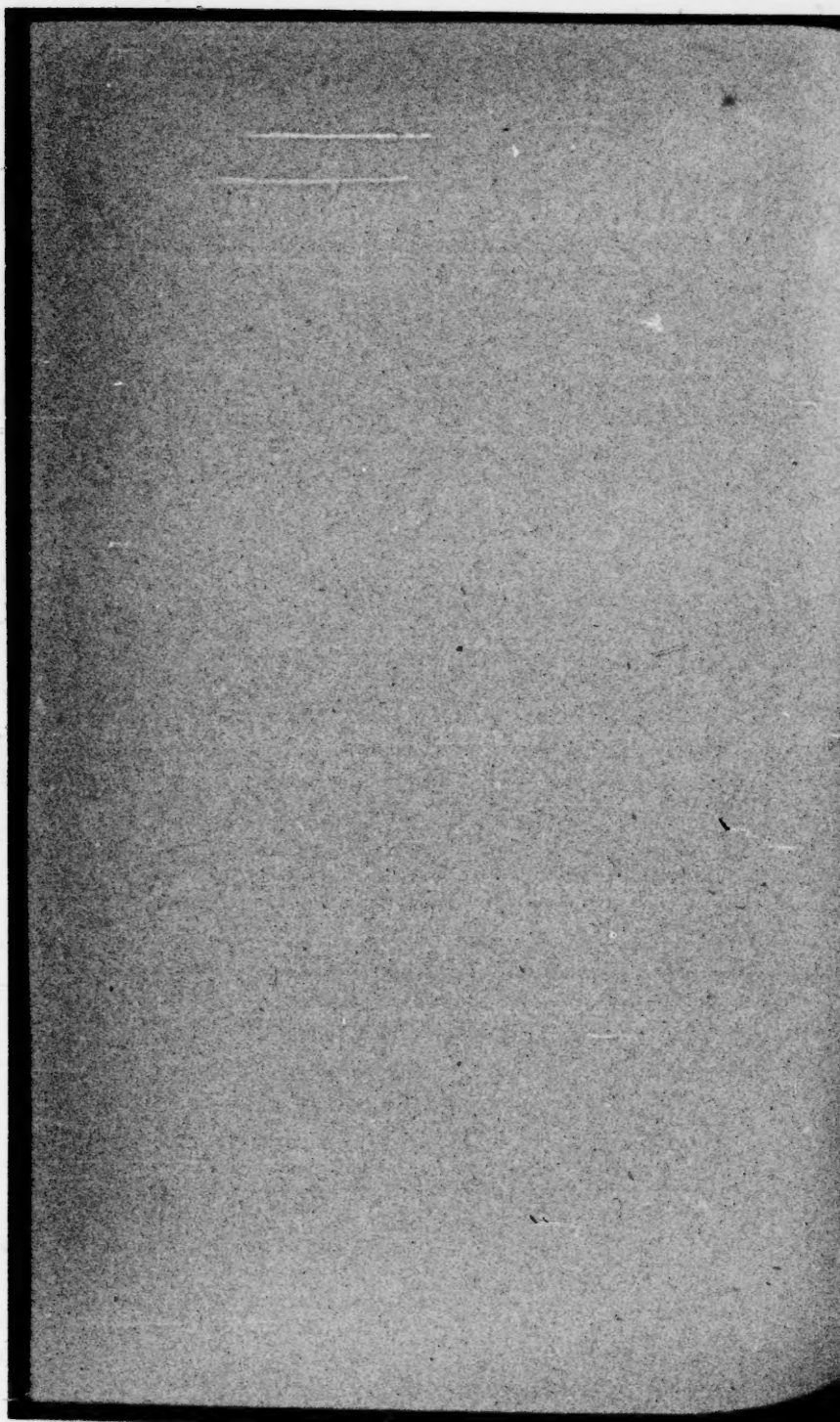
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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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FILED JUNE 19, 1913.

(23,262)



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1      *Petition for Writs of Habeas Corpus and Certiorari.*

District Court of the United States for the Southern District of New York.

UNITED STATES OF AMERICA ex Rel. JOHN MCNAMARA  
against

WILLIAM HENKEL, United States Marshal for the Southern District of New York, et al.

To the District Court of the United States for the Southern District of New York:

The petition of John McNamara respectfully shows:

I. Your petitioner is a citizen of the United States, and is imprisoned and restrained of his liberty in the County Jail of the County of New York, in the City and State of New York, for the Southern District of New York, by virtue of a warrant dated January 29th, 1912, issued by John A. Shields, "United States Commissioner for the Southern District of New York, and Commissioner duly authorized by the District Court of the United States for the Southern District of New York, to act as Commissioner under the laws of the United States concerning the extradition of fugitives from the justice of Foreign Governments, under a treaty or convention between the United States and any foreign government," a copy of which warrant is hereto annexed, marked "A."

II. Your petitioner further shows that said warrant was issued by the aforesaid United States Commissioner upon a complaint purporting to have been made by John J. Broderick, His Britannic Majesty's Senior Vice-Consul at the Port of New York, a copy of which complaint is hereto annexed and marked "B."

2      III. That the aforesaid complaint states no facts which create jurisdiction for the issuance of the aforesaid warrant and for the detention of your petitioner; that it does not state any facts which show that your petitioner has been guilty of any offense within the provisions of any extradition treaty between the United States of America and the United Kingdom of Great Britain and Ireland.

IV. That there has been no evidence of criminality of your petitioner, and no evidence at all that your petitioner has committed any of the crimes or offenses set up in said complaint, and that the warrant or commitment issued by said Commissioner has been issued wholly without jurisdiction and without any authority of law and that your petitioner is therefore held and restrained of his liberty without any authority of law.

V. That your petitioner has duly objected to the continuance of any proceedings under the said complaint and warrant before the said United States Commissioner on the ground that the said Commissioner has no authority or jurisdiction to proceed therewith on

the grounds aforesaid or under any of the provisions of the Constitution or laws of the United States or any treaty of the United States with any foreign country, and has duly demanded that he should be discharged and released from custody and that said warrant be vacated and set aside; but said objections have been overruled by the said Commissioner, and the said Commissioner has refused your petitioner's demand to be discharged and released from custody and that said warrant be vacated and set aside.

VI. That the cause or pretense of the imprisonment and restraint is that a charge has been made against him as set forth in the aforesaid complaint and warrant, and the decision of the aforesaid Commissioner that he has no power to admit your petitioner to bail on the charge which has been made against him as aforesaid.

3 VII. That your petitioner is informed by counsel and verily believes it to be true that his imprisonment and detention as aforesaid is illegal; that the aforesaid warrant is wholly void; that the aforesaid complaint states no jurisdiction of facts to warrant his imprisonment and detention; that your petitioner's restraint of his liberty constituted a deprivation of your petitioner's liberty without due process of law.

Wherefore, your petitioner prays that writs of habeas corpus and certiorari issue, directed to the persons having your petitioner in custody, commanding them to produce the body of the petitioner before this court forthwith, and that they return all proceedings against your petitioner to this court for such action thereon as may be proper in the premises.

JOHN McNAMARA,  
*Petitioner.*

O'GORMAN, BATTLE & MARSHALL,  
*Attorneys for Petitioner.*

Office & P. O. Address, 37 Wall Street, Borough of Manhattan,  
New York, N. Y.

UNITED STATES OF AMERICA,  
*Southern District of New York,*  
*County of New York, ss:*

John McNamara, being duly sworn, deposes and says that he is the petitioner named in the foregoing petition, that he has read the same and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JOHN McNAMARA.

Sworn to before me this 26th day of April, 1912.

[SEAL.]

RAYMOND H. SARFATY,  
*Commissioner of Deeds, New York City.*

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Apr. 27,  
1912.

4 NOTE.—Exhibit "A," Warrant of Arrest and Exhibit "B,"  
Complaint, copies of which were attached to the Petition, are  
set forth in full at pages — and — of the Record.

5 District Court of the United States for the Southern District  
of New York.

UNITED STATES OF AMERICA ex Rel. JOHN McNAMARA  
against

WILLIAM HENKEL, United States Marshal for the Southern District  
of New York, et al.

SIR: Please take notice that we shall ask leave to submit the annexed affidavit supplemental to the petition for writs of habeas corpus and certiorari herein at the argument upon the return of said writs on May 3d, 1912, and that the said affidavit be filed and made a part of the record herein, and for such other and further relief as to the Court may seem meet.

Dated, New York, N. Y., May 1st, 1912.

Yours, etc.,

O'GORMAN, BATTLE & MARSHALL,  
*Attorneys for Relator, Office and Post Office Ad-  
dress, 37 Wall Street, Borough of Manhattan,  
New York City.*

To Charles Fox, Esq., Attorney for His Britannic Majesty's  
Consul at the Port of New York, 3 Broad Street, New York City.

6 District Court of the United States for the Southern District  
of New York.

UNITED STATES OF AMERICA ex Rel. JOHN McNAMARA  
against

WILLIAM HENKEL, United States Marshal for the Southern District  
of New York, et al.

To the District Court of the United States for the Southern District  
of New York:

The relator, John McNamara, respectfully shows:

I. On the 8th day of January, 1912, the relator, John McNamara, was arrested in the City of New York upon a warrant issued by a City Magistrate of the City of New York, based upon a complaint charging him with bringing stolen property within the State. He was remanded until the 11th day of January, 1912, when he was arraigned, and the proceedings were then and there dismissed upon the consent of the District Attorney in and for the County of New York, State of New York.

II. Deponent, this relator, was immediately thereafter arrested upon a warrant dated the 8th day of January, 1912, issued by John

A. Shields, "United States Commissioner for the Southern District of New York, and Commissioner duly authorized by the District Court of the United States for the Southern District of New York, to act as Commissioner under the laws of the United States, concerning the extradition of fugitives from the justice of foreign governments, under a treaty or convention between the United States and any foreign government," a copy of which warrant is hereto annexed, marked "C."

7 III. Deponent further says that said warrant was issued by the aforesaid United States Commissioner upon a complaint purporting to have been made by John J. Broderick, His Britannic Majesty's Senior Vice Consul, at the Port of New York, a copy of which complaint is hereto annexed and marked "D."

IV. Deponent was arraigned before United States Commissioner John A. Shields on the said 11th day of January 1912, upon the said warrant, annexed hereto and marked "C," and a plea of not guilty was duly entered, and adjournments and hearings were thereafter had until the 20th day of February, 1912, when deponent, the relator herein and the defendant in said proceeding, before submitting any evidence in his own behalf, moved for a dismissal of the said warrant heretofore referred to and annexed hereto and marked "C," upon said warrant, and upon the complaint heretofore referred to and annexed hereto and marked "D," and upon the minutes of the said proceeding taken before the said John A. Shields, United States Commissioner for the Southern District of New York. That decision upon the said motion was reserved by the said United States Commissioner and thereafter and at the same hearing this relator was arrested upon the warrant issued by the said John A. Shields, United States Commissioner for the Southern District of New York on the 29th day of January, 1912, which said warrant is annexed to the petition herein and marked "A."

V. That hearings upon the said first warrant Exhibit 8 "C" herein were continued until the 27th day of February, 1912, and additional depositions were filed by the demanding government. That on the 8th day of March, 1912, the warrant annexed to this affidavit and marked "C" was dismissed by the said John A. Shields, United States Commissioner for the Southern District of New York.

VI. That upon the said hearings upon the charges embodied in the said warrant annexed hereto and marked "C", depositions of the following witnesses were offered in evidence by counsel for the demanding government: William Robert Stanton, verified January 26, 1912, George Greenwood, verified January 26, 1912, William H. G. Phipps, verified January 26, 1912, Howard Alexander Burton, verified January 27, 1912, Mary A. Burton, verified January 29, 1912, William George Davidson, verified January 27, 1912, August Charles Bartig, verified January 29, 1912, William S. Wilson, verified January 29, 1912, Mah Hing, verified February 16, 1912, Wong Po Tuck, verified February 16, 1912, Sing One, verified February 16, 1912, George Joseph August Lavery, verified February 16, 1912.

Ole Steen, verified February 16, 1912, John Albert Standish, verified February 16, 1912, William H. G. Phipps, verified February 7, 1912, and Walter Halliday Cotton, verified February 17, 1912. On February 20, 1912, the witness Donald Ferguson was orally examined before the Commissioner in support of the said warrant.

JOHN McNAMARA.

Sworn to before me this 1st day of May, 1912.

RAYMOND N. SARFATY,

[SEAL.]

*Commissioner of Deeds in and for  
the City of New York.*

9

"C."

The President of the United States of America to any Marshal of the United States, to the Deputies of any such Marshal, or any or either of them:

Whereas, complaint has been made on oath under the Treaty between the United States and Great Britain, concluded and signed at Washington, on the 9th day of August, 1842, and of the convention supplementary to the said Treaty between the same High Contracting Parties, concluded and signed at Washington, July 12th, 1889, before me John A. Shields, one of the Commissioners appointed by the District Court of the United States, for the Southern District of New York, and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States, giving effect to certain Treaty stipulations between this and Foreign Governments, for the apprehension and delivery of certain offenders; that one John McNamara did heretofore on or about the 15th day of September in the year 1911, at New Westminster, in British Columbia, in the Dominion of Canada, and within the jurisdiction of His said Britannic Majesty, commit the crime of burglary, to wit: did on or about the 15th day of September in the year 1911, at New Westminster aforesaid, feloniously break into and enter, in the night time, the banking house or bank of the Bank of Montreal in New Westminster, aforesaid, and steal and take therefrom property of the said Bank of Montreal, that the said John MacNamara is a fugitive from the justice of the Province of British Columbia, in the Dominion of Canada, and is now within the territory of the United States; that the crime with which the said John MacNamara is herein charged is an offence within the treaties between the United States and Great Britain.

Now, therefore, we command you, forthwith to take the said John MacNamara and bring him before me, the said Commissioner, at my office, in the Post Office Building, in the City of New York or before the nearest Justice, Judge or Commissioner in the District in which the said John MacNamara is apprehended, authorized to act in proceedings for the extradition of fugitives from a Foreign Government as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the

said John MacNamara may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified together with a copy of all the proceedings to the Secretary of State, that a warrant may issue for his surrender pursuant to the said treaties.

Witness my hand and official seal this 8th day of January in the year 1912.

[SEAL.]

JOHN A. SHIELDS,

*U. S. Commissioner for the Southern District of New York and a Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of Foreign Governments, under a Treaty or Convention Between the United States and Any Foreign Government.*

11

"D."

Before John A. Shields, Esq., U. S. Commissioner, &c.

In the Matter of the Application for the Extradition of JOHN MACNAMARA under the Treaties Between the United States and Great Britain.

UNITED STATES OF AMERICA,

*Southern District of New York, ss:*

John J. Broderick, His Britannic Majesty's Senior Vice Consul, at the Port of New York, being duly sworn deposes and says upon information and belief:—

First. That heretofore and on or about the 15th day of September in the year 1911, at New Westminster in British Columbia, in the Dominion of Canada, and within the jurisdiction of his said Britannic Majesty, one John MacNamara, did commit the crime of burglary, to wit: did on or about the 15th day of September in the year 1911, at New Westminster, aforesaid, feloniously break into and enter, in the night time, the banking house or bank of the Bank of Montreal in New Westminster, aforesaid, and steal and take therefore property of the said Bank of Montreal.

Second. That the said John MacNamara is a fugitive from the justice of the Province of British Columbia, in the Dominion of Canada, and is now within the territory of the United States.

12 Third. That the crime with which the said John MacNamara is herein charged is an offence within the treaties between the United States and Great Britain.

Fourth. That deponent's information and belief is based upon a message received at the British Consulate General, which message also states that a warrant has been issued at New Westminster, afore-

said, for the apprehension of the said John MacNamara for the offence herein charged.

JOHN J. BRODERICK.

Subscribed and sworn to before me this 8th day of January, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner for the Southern District of New York and a Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York, to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between the United States and Any Foreign Government.*

A Copy,

[SEAL.]

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, &c.*

13

*Writ of Habeas Corpus.*

The President of the United States of America to William Henkel, United States Marshal for the Southern District of New York, or any Other Person Having the Custody of John MacNamara, who is held pursuant to a certain warrant, dated the 29th day of January, in the year 1912, and signed by John A. Shields, United States Commissioner, duly authorized by the District Court of the United States for the Southern District of New York to act as Commissioner under the Laws of the United States concerning the extradition of fugitives from the Justice of Foreign Governments under a treaty or convention between the United States and any Foreign Government, Greeting:

We command you that you have the body of the said John MacNamara by you imprisoned and detained, as it is said, together with the time and the cause of such imprisonment and detention by whatsoever name he shall be called or charged, before one of the Justices of the United States District Court, at a session for hearing the general Motion Calendar, held in and for the Southern District of New York, at the Post Office Building, in the City, County and State of New York, on Friday, the 3d day of May, 1912, at 10:30 o'clock in the forenoon of that day, to do and receive what shall then and there be considered concerning him, and have you then and there this writ.

Witness, Honorable George C. Holt, one of the Justices of the



United States District Court, held in and for the Southern District of New York, the 27th day of April, 1912.

By the court:

[SEAL.]

THOMAS ALEXANDER, *Clerk*.

Above writ allowed April 27, 1912.

JULIUS M. MAYER, *D. J.*

O'GORMAN, BATTLE & MARSHALL,

*Petitioner's Attorneys, Office & Post Office Address,*

*37 Wall Street, Borough of Manhattan, New York City.*

14 (Endorsed:) May 3, 1912. Defendant produced before the Court as I am herein commanded. Wm. Henkel, U. S. Marshal, S. D. of N. Y.

Dated N. Y., May 3, 1912.

Decision reserved May 3, 1912.

L. HAND, *D. J.*

15

B.

*Affidavit of John J. Broderick.*

Before John A. Shields, Esq., U. S. Commissioner &c.

In the Matter of the Application for the Extradition of JOHN MC-NAMARA under the Treaties between the United States and Great Britain

Complaint.

UNITED STATES OF AMERICA.

*Southern District of New York, ss:*

John J. Broderick, His Britannic Majesty's Senior Vice Consul, at the Port of New York, being duly sworn deposes and says upon information and belief:

First. That heretofore and on or about the 15th day of September in the year 1911, at New Westminster in British Columbia, in the Dominion of Canada, and within the jurisdiction of his said Britannic Majesty, one John McNamara, did commit the crime of Burglary, to wit: did on or about the 15th day of September, in the year 1911, at New Westminster, aforesaid, feloniously break into and enter a building occupied as a garage, by one J. Trapp, and steal and take therefrom an automobile and rugs, belonging to and the property of the said J. Trapp.

Second. That the said John McNamara is a fugitive from the justice of the Province of British Columbia, in the Dominion of Canada, and is now within the territory of the United States.

Third. That the crime with which the said John McNamara is herein charged is an offense within the treaties between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon a message received this day by telegraph by the British Consul General in New York, from the Attorney General of the Province of British Columbia, which message also states that warrants have been issued at New Westminster aforesaid, for the apprehension of the said John McNamara for the offense herein charged and certified copies of the warrant and depositions are being forwarded.

JOHN J. BRODERICK.

Subscribed and sworn to before me this 29th day of January, 1912.

JOHN A. SHIELDS.

*U. S. Commissioner for the Southern District of New York and a Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between the United States and Any Foreign Government.*

#### Warrant of Arrest.

The President of the United States of America to any Marshal of the United States, to the Deputies of any such Marshal, or any or either of them:

Whereas, complaint has been made on oath under the Treaty between the United States and Great Britain, concluded and signed at Washington, on the 9th day of August, 1842, and of the convention supplementary to the said Treaty between the same High Contracting parties, concluded and signed at Washington, July 2th, 1889, before me, John A. Shields, one of the Commissioners appointed by the District Court of the United States, for the Southern District of New York and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised statutes of the United States, giving effect to certain Treaty stipulations between this and foreign Governments, for the apprehension and delivery of certain offenders; that one John MacNamara, did heretofore on or about the 15th day of September in the year 1911, at New Westminster, in British Columbia, in the Dominion of Canada, and within the jurisdiction of His Said Britannic Majesty, commit the crime of burglary, to wit: did on or about the 15th day of September in the year 1911, at New Westminster, aforesaid, feloniously break into and enter a building occupied as a garage, by one J. Trapp, and steal and take therefrom an automobile and rugs, belonging to and the property of the said J.

Trapp; and that the said John MacNamara is a fugitive from the justice of the Province of British Columbia, in the Dominion of Canada, and is now within the territory of the United States; and that the crime with which the said John MacNamara is herein charged is an offence within the Treaties between the United States and Great Britain.

18 Fourth. That dependent's information and belief are based upon a message received this day by telegraph by the British Consul General in New York, from the Attorney General of the Province of British Columbia, which message also states that warrant has been issued at New Westminster aforesaid, for the apprehension of the said John MacNamara for the offence herein charged and certified copies of the warrant and depositions are being forwarded.

JOHN J. BRODERICK.

Subscribed and sworn to before me this 29th day of January, 1912.

[SEAL.]

JOHN A. SHIELDS,

*U. S. Commissioner for the Southern District of New York and a Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between the United States and Any Foreign Government.*

19 (Endorsed:) Before John A. Shields, Esq., U. S. Commissioner, &c.—In the Matter of the Application for the Extradition of John MacNamara under the Treaties between the United States and Great Britain.—Warrant—Charles Fox, Attorney for H. B. M. Consul Gen'l, No. 3 Broad St. New York City.

Received this warrant on the 20th day of Feb. 1912, at New York City and executed the same by arresting the within named John MacNamara at New York City on the 20th day of Feb. 1912 and have his body now in Court as by law commanded.

WM. HENKEL,  
U. S. Marshal.

The within named accused having been arrested and brought before me on the within warrant and the charges in the within warrant and complaint named having been duly explained to said accused and he having been duly cautioned and informed  
20 of his rights in the matter and that he is entitled to an examination and to counsel says he demands an examination and the said accused is hereby committed to the custody of

the United States Marshal for the Southern District of New York to be brought before me for examination on February 27th, 1912, at 2 o'clock P. M. on the said day.

February 20, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner, Southern District of New York  
and Commissioner, etc.*

To Wm. Henkel, Esq., U. S. Marshal.

Attendance and examination adjourned to await decision of Commissioner on motion to dismiss.  
Feb. 27, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

Attendance. Motion to dismiss denied, and examination adjourned to March 14, 1912 at 2 o'clock P. M., to put in defence.  
Mch 8, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

Attendance and further examination adjourned to March 20, 1912, at 2 o'clock P. M.  
New York, March 14, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

Attendance and examination adjourned to March 21, 1912, at 4.15 o'clock P. M.  
March 20, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

21 Adjourned to Mch. 22/12. 3 P. M.

ALEX. GILCHRIST,

*U. S. Comm'r.*

Attendance and examination adjourned to April 2, 1912, at 2 o'clock P. M.  
Mch. 22, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

Attendance and further examination adjourned to April 5, 1912, at 2 o'clock P. M.  
Apl. 2, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

Attendance and examination adjourned to await decision of Commissioner on motion to dismiss.  
April 5, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner and Commissioner, etc.*

*Writ of Certiorari.*

The President of the United States to John A. Shields, United States Commissioner for the Southern District of New York and Commissioner Duly Authorized by the District Court of the United States for the Southern District of New York, and also Commissioner Appointed under the Laws of the United States Concerning the Extradition of Fugitives from Justice, etc.

We command you that you return before a Stated Term of the District Court of the United States for the Southern District of New York, to be held in the Post Office Building, in the Borough of Manhattan, City of New York, on the 3d day of May, 1912, at 10:30 o'clock in the forenoon of that day all proceedings had and taken before you against John McNamara under and pursuant to a Warrant issued by you, John A. Shields, United States Commissioner for the Southern District of New York, on the 29th day of January, 1912, upon a complaint purporting to have been made by John J. Broderick, His Britannic Majesty's Senior Vice Consul at the Port of New York, and also all proceedings taken before you in said matter and to do and receive what shall then and there be considered concerning the said matter and have you then and there this Writ.

Witness, Honorable George C. Holt, U. S. District Judge, Southern District of New York, the 27th day of April, 1912.

[SEAL.]

THOMAS ALEXANDER, *Clerk.*

O'GORMAN, BATTLE & MARSHALL,

*Petitioners' Attorneys; Office and Post Office Address,*

*37 Wall Street, Borough of Manhattan, New York City.*

Let the above writ issue.

April 27th, 1912.

JULIUS M. MAYER, *D. J.*

*Return to Writ of Certiorari.*

In the Matter of the Application for the Extradition of JOHN McNAMARA, under the Treaties Between the United States and Great Britain, on the Charge of Burglarizing the Garage of Thomas J. Trapp.

UNITED STATES OF AMERICA,

*Southern District of New York, ss:*

I, John A. Shields, United States Commissioner, Southern District of New York, and Commissioner duly authorized and specially appointed under Title 66 of the Revised Statutes of the United States, in obedience to the foregoing Writ of Certiorari, Do Hereby Certify that the papers hereunto annexed, and returned herewith contain

the record of the proceedings had before me in the above-entitled matter.

New York, May 1st, 1912.

JOHN A. SHIELDS,  
*U. S. Commissioner, Southern District of  
 New York, and Commissioner Duly Au-  
 thorized and Specially Appointed under  
 Title 66 of the Revised Statutes of the  
 United States.*

24 UNITED STATES OF AMERICA,  
*Southern District of New York:*

In the Matter of the Application for the Extradition of JOHN Mc-  
 NAMARA, under the Treaties Between the United States and Great  
 Britain, on the Charge of Burglarizing the Garage of Thomas J.  
 Trapp.

Before John A. Shields, Esq., U. S. Commissioner.

NEW YORK, February 27, 1912.

Appearances:

The Commissioner.

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

Abram J. Rose, Esq., for the Bank of Montreal.

The Accused, in person.

Mr. Fox: This charge is breaking into and entering a building  
 occupied as a garage by one Thomas J. Trapp, and stealing  
 25 and taking therefrom an automobile and rugs, the property  
 of Trapp.

Mr. Fox: I offer in evidence the deposition and information of  
 Thomas John Trapp, warrant for the arrest of John McNamara, is-  
 sued by Henry L. Edwards, Police Magistrate, British Columbia, and  
 dated January 26, 1912, accompanied by the certificate of the United  
 States Consul-General at Vancouver, that they are properly and  
 legally authenticated so as to entitle them to be received in evidence  
 for similar purposes by the tribunals of the Dominion of Canada,  
 as required by the Act of Congress of August 3, 1882.

Mr. Fox: I offer in evidence depositions of Alice Wise, Thomas  
 Dockerell Trapp and Stanley V. Trapp, which depositions are ac-  
 companied by the certificate of the U. S. Consul-General at Van-  
 couver, that they are properly and legally authenticated as re-  
 quired by the Act of Congress of August 3, 1882.

Mr. Fox: Now, I offer in evidence deposition of Stanley V.  
 Trapp, accompanied by the certificate of the Consul-General of the  
 United States at Vancouver, that they are properly and legally au-  
 thenticated as required by the Act of Congress of August 3,  
 1882.

26 Mr. Fox: Now, I want to offer in evidence in this case  
 the deposition in the other charge, that is, that was used on

the other charge. Oh! shall we take Ferguson's testimony in the other charge as in this case?

Mr. BATTLE: These two charges I wish you would keep entirely separate.

Mr. Fox: Yes. Shall we take the testimony of Ferguson in this case as in the other case as it stands?

Mr. Fox: Now, I offer in evidence in this case the deposition of George Greenwood—

Mr. BATTLE: Is that a deposition that was taken in support of the first charge?

Mr. Fox: It was a deposition taken in the proceeding against McNamara as introduced in the previous case and now to be offered in this—

Mr. BATTLE: That deposition was certified by David F. Wilbur, Consul-General of the United States at Vancouver, to be used—

Mr. Fox: I haven't got my offer in. I offer in evidence in this case the deposition of George Greenwood, taken before E. J. Clark, Justice of the Peace, of New Westminster, British Columbia, on the 26th day of January, 1912. That deposition is one of a number

27 that are certified to by the Consul-General at Vancouver, British Columbia, to be properly and legally authenticated as required by the Act of August 3, 1882.

Mr. BATTLE: Is that your offer?

Mr. Fox: Yes.

Mr. BATTLE: This is the same deposition that was put in in support of the first charge, and I ask that it be noted on the record that it is one of the depositions to which David F. Wilbur, Consul-General of the United States at Vancouver, British Columbia, certifies to be issued by Henry L. Edwards, Police Magistrate and proposed to be used on the application for the extradition from the United States of John McNamara, charged with unlawfully breaking into and entering the banking house of the Bank of Montreal, in New Westminster, British Columbia, and stealing therefrom \$271,000, and are properly and legally authenticated so as to entitle them to be received in evidence by the tribunals of the Dominion of Canada. I object to the introduction of this disposition upon the ground that it affirmatively appears—and, I understand, is not disputed in any way—that this deposition was taken for the purpose

28 of being used in support of the charge against John McNamara of breaking into the banking house of the Bank of Montreal, and stealing \$271,000, and it was not taken in support of the charge of breaking into the garage, which is the second charge, and therefore it is incompetent and improper, and should not be received.

Objection overruled. Exception.

Mr. Fox: Now, I am going to put in the deposition of Phipps—that one with the bunch of exhibits attached. I offer in evidence the deposition of William H. G. Phipps, taken before T. S. Annandale, Justice of the Peace for the Province of British Columbia, on the 17th day of February, 1912; also the deposition of Walter Halliday Cotton, taken before the same Justice of the Peace on the 17th



day of February, 1912, with the exhibits attached to the deposition of Cotton, as those depositions are certified to by the American Consul at Vancouver, to be properly and legally authenticated so as to entitle them to be received in evidence under the Act of Congress of August 3, 1882.

Mr. BATTLE: These are the same depositions, are they not, which were offered in support of the first charge?

Mr. Fox: Yes.

29 Mr. BATTLE: I have asked it to be noted on the record that the Consul-General, Mr. Wilbur, certifies that these depositions are properly and legally authenticated to be used on the application for the extradition of John McNamara, charged with breaking and entering the premises of the Bank of Montreal, and stealing therefrom \$271,000, and they were not taken to be used on any application for the extradition of John McNamara for breaking into the garage on the second charge, and they are incompetent and improper as evidence in support of this application under the second charge, to wit, the breaking into the garage.

Mr. Fox: There is a complete answer to that on the face of it. The certificate of the American Consul cannot limit the use of the deposition. All the statute requires is that any deposition or copy under these proceedings shall be properly and legally authenticated under the Act of August 3, 1882. Those depositions are so authenticated, and there is nothing in the statute or practice in this case that limits a deposition to use in one case. It would be ridiculous and nonsensical to require a duplicate of these depositions for all cases, instead of using one.

30 Mr. BATTLE: The point is this, your Honor: The Consul-General certifies that these are to be used on the application for the extradition of John McNamara the Bank Burglar, not McNamara the Garage Burglar. These are the purposes for which the depositions are taken. It might be that the witnesses would qualify their statements if they knew they were giving their testimony upon an application for his extradition on this other charge, which apparently these witnesses knew nothing about.

Mr. Fox: The depositions which are introduced in evidence are pertinent to this inquiry.

The COMMISSIONER: That first charge, you want this—I forgot to say at that time admitted in evidence. They must be admitted in evidence under the Act, if they are properly certified. They must be admitted, as to their weight is another question.

Mr. BATTLE: As to the charge in which they were taken—which they were taken to support.

Mr. Fox: Well, they are admitted, then. In this automobile charge, I don't offer it entirely. I offer the deposition—

Mr. BATTLE: I object to it on the ground that they were taken in the other proceeding.

31 Mr. Fox: Now, in regard to Ferguson: Shall his testimony as taken the other day be received in evidence in this case, with the same force and effect as if repeated?

Mr. BATTLE: Without waiving any rights or exceptions I have

taken, or any rights of the prisoner, I will stipulate that Ferguson, if called now, would give the same testimony as in the first examination.

Mr. Fox: I will tell you—the stipulation is that the testimony of Ferguson as taken on the 5th day of February (or whatever it may have been) in the proceeding for the extradition of the accused on the charge of breaking into the Bank of Montreal, shall be read in evidence in this case with the same force and effect as if the witness had been sworn in this proceeding and questioned and the same questions and answers had been received.

Mr. BATTLE: Well, that is the same thing.

Mr. Fox: And is as follows:—

“DONALD FERGUSON, being first duly sworn, testified as follows:

Q. What is your name?

A. Donald Ferguson.

Q. How old are you?

A. Thirty-nine.

32 Q. Where do you reside?

A. In New Westminster, British Columbia

Q. Did you reside there on the 15th of September, 1911?

A. Yes, sir.

Q. What is your occupation?

A. Teamster.

Q. By whom are you employed?

A. Anderson & Lesbies Hardware Store.

Q. Where is there store?

A. On Columbia Street.

Q. In Westminster?

A. Yes, New Westminster.

Q. Are you employed by this firm alone?

A. Yes.

Q. You drive teams for them?

A. I drive their teams on their own work.

Q. Whereabouts on Columbia Street is their place of business?

A. The second door from Mackenzie Street.

Q. Where do you live in New Westminster?

A. On the next block west; on Columbia Street near Eighth Street.

Q. How long have you lived there?

A. For two years.

Q. How long have you been working for these hardware merchants?

A. For about six months.

Q. Now, on the morning of September 15th—first where does this firm have its stable or place where they keep their horses?

A. Between Second and Third Street on Queens and Royal Avenues.

33 Q. Now, on the morning of September the 15th, 1911, did you go to your work?

A. I did.

Q. What time did you leave your house?

A. I left my house somewhere about twenty minutes to six.

Q. When you left your house that morning—on the morning of September 15th, 1911, where were you going?

A. I was going up to the barn for the horses.

Q. As I understand you left your house about twenty minutes of six?

A. About that time.

Q. How do you fix the time?

A. I always take the time from a jeweler's on the block almost opposite to where I live.

Q. On that morning did you notice the clock?

A. Yes I did. It was 17 minutes to six o'clock.

Q. Now, as you left your house on Columbia Street you then proceeded east?

A. Yes, along Columbia Street.

Q. To what street?

A. To Sixth Street.

Mr. BATTLE: I object to the questions as leading.

By Mr. Fox:

Q. Tell us how you went to the barn?

A. I went up Eighth Street to Royal Avenue, then to Fourth Street and across the vacant lot between Third and Fourth Street,  
34 along a narrow lane to where the barn is.

Q. Now, can you tell what building is situated at the south-east corner of Royal Avenue and Sixth Street?

A. There is a dwelling on that corner belonging to Mr. Trapp, the next one is the Y. M. C. A., a new building in the course of construction.

Q. As you turn from Sixth Street into Royal Avenue can you tell us the character or kind of sidewalk there is there?

A. There is only a temporary sidewalk there.

Q. When you got to the corner of Royal Avenue and Sixth Street and turned down Royal Avenue, did you see anything in the street?

A. I did.

Q. What did you see?

A. I saw an automobile.

Q. Do you know whose automobile it was?

A. I do.

Q. Whose was it?

A. Mr. Trapp's.

Q. What is his first name?

A. Thomas J. Trapp.

Q. Do you know whether or not Mr. Trapp had a garage on that street?

A. Yes, I do know that he has.

Q. Have you seen that automobile in his garage?

A. Many times.

Q. Now how far was this automobile from the Trapp garage, in what direction?

A. Why I reckon between forty and fifty feet towards Sixth Street.

Q. How far is the garage from Fourth Street?

35 A. I should say about two hundred feet or more.

Q. Now, when you saw that automobile did you see anybody there about it?

A. Yes.

Q. Tell us when you saw that automobile, what first directed your attention to it?

A. I saw a man standing in front of it trying to crank it.

The COMMISSIONER: When was that?

Mr. FOX: On the morning of September 15, 1911.

Q. Did you then approach toward the automobile?

A. I did.

Q. What, if anything, did the man you saw cranking the automobile do that you saw?

A. He was trying to start the machine off.

Q. Now, did you walk up Royal Avenue?

Mr. BATTLE: Objected to as leading.

Q. When you first saw this man before the automobile where were you?

A. I had just turned in Royal Avenue off Sixth Street.

Q. You came to this sidewalk?

A. Toward the automobile.

Q. This man was there?

A. As I came along he turned his head over his left shoulder and looked towards me. When I came up to the man he turned his head over his right shoulder. He looked at me several  
36 times as I was passing by. I looked at the auto as I passed and I knew it was Mr. Trapp's automobile. On the opposite side from where I was were three figures.

Q. What were these three figures?

A. They were men.

Q. Now, do you see the man here in this room that you saw in front of that automobile on that morning?

A. Yes.

Q. Point him out?

A. Here he is right here (Indicating accused).

Q. This is the man you saw in front of the machine that morning?

A. Yes, sir.

Q. After you passed this automobile on Royal Avenue did you give your attention to this automobile?

A. After I passed the automobile I walked up to the garage. When I got there I noticed the new tracks where the automobile had been run on Royal Avenue and down Sixth Street.

Q. Do you know whether the tracks were there the night preceding?

A. Well, that night it had been raining, but it was all dried up by that time.

Q. You saw these tracks from the garage down Sixth Street?

A. Quite plainly, yes, sir.

Q. What did the tracks show?

A. The automobile backed straight out of the garage and then went down the Street.

37 Q. Where was the front of this automobile pointing?

A. Towards Sixth Street.

Q. What is the character of the grade in Royal Avenue from this garage towards Sixth Street?

A. It is downhill.

Q. When you got to the garage and noticed what you state as to these tracks, did you give your attention to this automobile?

A. I just looked around and saw there were four figures at the automobile and walked off.

Q. Now, when you went up Royal Avenue you turned in Fourth Street?

A. Yes, sir.

Q. When you came to Fourth Street did you look again towards the automobile?

A. Not until I got to the corner of the vacant lot. I looked around but there was no one by the automobile then.

Q. What street is north of Royal Avenue between Fourth and Sixth Streets?

A. Queens Avenue.

Q. Now, between Queens and Royal Avenues and Fourth and Sixth Streets in New Westminster what is the character of that block?

A. Mostly bushes, except on the northwest corner where there is some clear ground.

Q. What is directly opposite to where this automobile was standing when you saw it?

38 A. The bushes and thick trees.

Cross-examination by Mr. BATTLE:

Q. Now, Mr. Ferguson, you say you looked back and saw this automobile and saw four figures?

A. Yes.

Q. You saw four figures?

A. Yes.

Q. How far was you from the automobile when you looked back and saw the four figures?

A. Well, about forty or fifty feet.

Q. You could not tell one figure from the other could you?

A. No, not very well.

Q. Then you looked back a little later and did not see any figures there?

A. Yes.

Q. Were you at the same place?

A. No, I was almost on the opposite side of Royal Avenue on Fourth Street; by the corner of the vacant lot.

Q. On Royal Avenue?

A. Yes.

Q. At that time you looked back and did not see any figures?

A. No.

Q. Was the automobile standing lengthwise to you?

A. It was standing in much the same position as when I passed it.

Q. Was the side turned towards you?

A. No, not the side.

39 Q. The back was towards you?

A. Yes.

Q. How far were you from the automobile?

A. About two hundred feet.

Q. Now, how long a period was it from the time you saw those four figures from the time you looked and saw no figures there?

A. Oh, a couple of minutes.

Q. You did not take any particular notice of what occurred?

A. It did not enter my head.

Q. It didn't strike your memory particularly on that morning?

A. No, because I worked in a livery and it was a common thing for people to take out a machine and I thought Trapp was going out with some friends.

Q. So this automobile had been taken out by parties before?

A. I mean livery automobiles.

Q. I understood you to say that the same automobile had been taken out by Mr. Trapp and his friends. You say other autos had been taken out by other parties before?

A. Yes.

Q. This did not strike your attention particularly that morning?

A. No.

Q. There was nothing unusual about it?

A. No, sir.

Q. This was about 6.20 in the morning?

A. Very close to six o'clock; a few minutes to six.

40 Q. What time did you leave your house?

A. About twenty minutes of six.

Q. What was the nature of the weather on that morning?

A. It was not very light.

Q. It was a cloudy morning?

A. The sky was overcast.

Q. It was cloudy, wasn't it?

A. Yes.

Q. You left your house at twenty minutes of six?

A. Yes.

Q. By whom are you now employed?

A. Anderson & Lesbies.

Q. You have worked for them about six months?

A. Yes, sir.

Q. Where were you employed before that?

A. Ball, English & Company.

Q. How long did you work for them?

A. About nine months.

Q. Where were you before that?

A. A. J. Hill, Civil Engineer.

Q. What kind of work did you do there?

A. Surveying.

Q. How long had you been with that concern?

A. Something like six months.

41 Q. What is your age?

A. 39 years.

Q. Were you ever connected with the Pinkerton Detective Agency?

A. No, sir.

Q. Do you know anybody connected with the Pinkerton Agency?

A. Yes, sir, I do now.

Q. Who?

A. Mr. Thornhill.

Q. When did you first see Mr. Thornhill?

A. When I came to New York.

Q. You have been at these hearings before?

A. I was here at the last one but I did not come inside.

Q. Who were you with?

A. No one.

Q. Did you come with Mr. Thornhill?

A. No.

Q. You came by yourself?

A. Yes.

Q. What other Pinkerton men have you talked with?

A. I can't say I have talked with any.

Q. You have met some of them?

A. Yes.

Q. Who are they?

A. Mr. Green and several I do not know the names of.

Q. You have met a number of them?

A. I have seen them.

Q. You have been to the Pinkerton office?

A. Yes, sir.

Q. And talked over the case?

A. No.

42 Q. You mean to say that you have been to the Pinkerton office and met a number of detectives and never mentioned this case?

A. No, nothing to speak of.

Q. What do you mean?

A. They told me I had to come here.

Q. Didn't you talk over the case with them?

A. No.

Q. To whom did you talk before you left Vancouver?

A. Mr. Ahearn.

Q. He is the Superintendent of Police?

A. Superintendent of the Pinkertons.

Q. You talked with him in Vancouver?



A. Yes, New Westminster.

Q. Did you talk to any other Pinkerton men there?

A. No.

Q. Did you talk to Ahearn about what you were to testify to?

A. Mr. Ahearn came to me; he and Chief Bradshaw of the police.

Q. Ahearn is head of the Pinkertons there?

A. Yes.

Q. He is stationed there?

A. He is stationed in Seattle.

Q. He and Chief Bradshaw came to see you about the case?

A. They came to me and asked me what I knew about the case and asked me if I could give a description of the men.

43 Q. You didn't talk the case over with them?

A. Yes.

Q. Did you come on to New York by yourself?

A. I did.

Q. Who gave you the money to come on with?

A. Don't you think I haven't any money of my own?

Q. I am asking you who gave you the money to come to New York?

A. I got money from them.

Q. From Ahearn?

A. Yes.

Q. Ahearn advanced the money to come on with?

Mr. Fox: I object; he did not say that Ahearn advanced any money at all.

A. I got some money from Ahearn.

Q. How much did you get from Ahearn?

Mr. Fox: I object; this is not at all material.

The COMMISSIONER: What difference does it make if he got a thousand dollars?

Q. What did you get from Ahearn?

A. Got my ticket and \$5.00.

Q. Anything else?

A. No, sir.

Q. Who else did you get money from?

A. I got some from Mr. Bremner.

Q. You have been here since January the 12th?

A. Yes, sir.

44 Q. Where have you been stopping?

Mr. Fox: I object to that.

Q. Are you stopping with any of the Pinkerton men?

A. No, sir.

Q. Stopping at a hotel?

A. Yes.

Q. In this city?

A. Yes.

Q. You say you were here at the last hearing?

A. Yes.

Q. Who told you to come down?

A. Mr. Thornhill.

Q. Did you see Mr. McNamara when he was brought down that day?

A. No, sir. The first time——

Q. When was the first time you saw him?

A. The time he was in the United States Court; in one of the other rooms.

Q. When he was before Judge Hough?

A. I could not tell that.

Q. That was the day of the habeas corpus proceeding?

A. I do not know.

Q. What room was that?

A. Room 66.

Q. You saw McNamara then?

A. Yes.

Q. Who did you go to the court room with that day?

A. I came alone.

Q. Who told you to go there?

A. Mr. Thornhill.

Q. Was he there that day?

A. Yes.

45 Q. Who pointed McNamara out to you?

A. No one.

Q. Where was he?

A. Inside of the room.

Q. He was sitting there with a Marshal?

A. There was a man alongside of him.

Q. You and Thornhill were in the room?

A. I could not say that Thornhill was in the room.

Q. You said Thornhill was in the room?

A. I did not.

Mr. Fox: He did not say that.

Q. I understood you to say you saw Thornhill that day?

A. I did see him.

Q. Where was he when you saw him?

A. I saw him in the lobby; in the hall.

Q. In the hall in front of the court room?

A. Yes.

Q. Then you went in this court room?

A. I did.

Q. Did Thornhill go in with you?

A. He did not.

Q. Did you see any other Pinkerton men there that day?

A. No, not that I know of, I do not remember.

Q. That was the first time you saw McNamara?

A. Yes, the first time in New York.

Q. You haven't seen him since?

A. Only today.

Q. Did you see him at the last hearing?

A. He was not here.

Q. At the time before that; were you here at the hearing the time before McNamara was before the Judge?

46 A. No.

The COMMISSIONER: Have you seen McNamara from the time you saw him in the court room before the Judge until you saw him today?

The WITNESS: No.

By Mr. BATTLE:

Q. You are sure about that?

A. Yes.

Q. Were you at the hearing before the last one held before the Commissioner?

A. No.

Q. Weren't you in the building week before last?

A. Yes.

Q. Did you come in this court room?

A. No.

Q. Who was with you?

A. One of the Pinkerton men.

Q. What was his name?

A. I do not remember.

Q. Didn't you come into this court room?

A. No.

Q. Didn't you see McNamara?

A. I was not in any room that day.

Q. Why did you come here?

A. For the same purpose I came today.

Q. To testify?

A. Yes.

Q. You didn't come into the room?

A. I wasn't in the room.

Q. When you passed by the automobile that morning how far were you from it when you noticed the three figures?

47 A. When I first saw them?

Q. When you first saw the automobile?

A. A little over 200 feet.

Q. At that time did you see around the automobile?

A. I could just see the man in front of it.

Q. Did you see the face of the man in front of the automobile?

A. Yes.

Q. When you were 200 feet away?

A. When I was walking along the walk.

Q. How close did you pass by the machine?

A. About 20 feet.

Q. The nearest you were to the machine was about 20 feet?

A. Yes.

Q. You saw four men there?

A. Yes, as I was passing the machine.

Q. One was cranking the machine and the other three you could not distinguish?

A. No, sir.

Q. What were the other three men doing?

A. Just standing there by the side of the automobile on the ground close by the automobile.

Q. Three were standing by the machine and one was cranking it?

A. Yes.

Q. You could not see who the other three men were?

48 A. No, sir.

Q. When you saw McNamara in the court room where was he sitting?

A. He was sitting on the Judge's left hand, I think in the second chair from the end.

Q. He was in the jury box?

A. Yes.

Q. Who was sitting by his side?

A. I do not know.

Q. Where were you standing?

A. I was in one of the back seats.

Q. Of the court room?

A. Yes, further back in the room.

Q. In the rear of the court room?

A. Yes.

Q. That room is a large room, nearly twice the size of this room?

A. Yes, longer.

Q. You mean you saw him sitting up in front of the room?

A. Yes.

Q. How many feet off were you?

A. Oh, I don't know.

Q. About how many?

A. Thirty or forty feet.

Q. You were sitting down?

A. Yes.

Q. By yourself?

A. All alone, yes.

Q. Did you come out and speak to Thornhill afterward?

A. No, sir.

Q. Didn't you tell Thornhill you had seen McNamara?

A. No.

49 Q. Who did you tell?

A. I told Mr. Graham.

Q. Where was he?

A. In the lobby.

Q. Did he go into the court room?

A. I think he did.

Q. Did you go in the court room with Graham?

A. No. I went in alone.

Q. How many other Pinkerton men were there besides Thornhill and Graham?

A. I do not know if there were any more; I do not remember any more.

Q. Have you been up to the Tombs Prison here?

A. No, sir.

Q. Have you talked to any of the detectives in this case in New York; O'Reily or Woolridge?

A. I do not know them.

Q. Do you know that fine looking man there with gray hair?

A. I never saw him before in my life.

Q. Are any of the Pinkerton men staying at the hotel with you?

A. Not that I know about.

Q. Do you think there are any?

A. No.

Q. Ferguson, you remember the time when you were here the week before last; when you came down and did not come in the court room, you didn't see McNamara that day?

A. No, sir.

Q. What elevator did you take to leave the building that day, the south or north side?

A. Up in that corner there (pointing).

A. That would be the northeast side?

A. I do not know.

Mr. ROSE: You will have to tell him; he would not know.

Q. You took the elevator in this corner of the building (indicating)?

A. Yes.

Q. Well, that is the northeast corner. Were there any other people in the car when you went down?

A. Yes, sir.

Q. What Pinkerton man was with you?

A. I forget his name; the fellow I saw in the lobby that day.

Q. He went down in the car with you?

A. Yes.

Q. Were McNamara and Conroy in the car?

A. I didn't pay any attention to it.

Q. Did the Pinkerton man point McNamara out to you?

A. No.

Q. You mean to say that you went down on that car and did not pay any attention to whether McNamara was there?

A. I did not notice who was on the car.

Q. You do not know whether McNamara was in the car or not?

A. He might have been.

51 Q. What is your best recollection?

A. I did not pay any attention to it.

Q. That was after you saw him in the court room?

A. Yes.

Q. You did not see McNamara in the car?

A. I did not pay any attention to it; I was the last one to get in the car.

Q. The Pinkerton man got in first?

A. Yes; I was standing with my back to the door.

Q. Was there any conversation about McNamara being in the car?

A. Not that I know about.

Q. What is the name of the Pinkerton man you went down in the elevator with?

A. I do not know.

Q. How often had you seen him?

A. Twice.

Q. What is his name, Ferris?

A. I do not know.

Q. Mr. Ferguson, don't you remember his name?

A. I do not.

Q. After you got on the sidewalk didn't you and Ferris have a talk about McNamara?

A. I do not remember that his name was mentioned.

Q. It might have been but you do not remember it?

A. I do not remember that his name was mentioned.

Q. Have the Pinkertons agreed to pay your expenses back to Canada?

52 Mr. Fox: Now, I will object to that.

The COMMISSIONER: I will allow it. What difference does it make; it is not to be expected he is paying his own expenses.

By Mr. BATTLE:

Q. Have they promised to pay your expenses back?

Mr. Fox: I object to that.

By Mr. BATTLE:

Q. Now, Ferguson, have any arrangements been made with you by the Pinkerton men?

A. No, sir.

Q. Who promised to pay your expenses?

A. My master, who sent me here.

Q. You say the Pinkertons paid your expenses here?

Mr. Fox: No, he did not say that. He said he was given a ticket and five dollars.

By Mr. BATTLE:

Q. Who promised to buy your ticket back?

A. Mr. Bremer told me if I was short of money to ask for it from the Pinkerton people.

Q. Have you asked for any?

Mr. Fox: I object to that.

53 Q. Have you asked for any?

A. No, sir.

Q. Have you asked for any other money besides this five dollars?

A. Oh, yes.

Q. From the Pinkertons?

A. Yes.

Q. How much?

A. I do not think that is anybody's business.

Mr. FOX: I object to that as entirely immaterial.

Mr. BATTLE: I am asking what they paid him to come here.

Mr. FOX: I object on the ground that it is incompetent and immaterial.

The COMMISSIONER: I will allow it.

By Mr. BATTLE:

Q. How much money have you received from the Pinkertons?

A. They have paid my board.

Q. How much has that been; about how much?

A. Somewhere about twelve or fifteen dollars a week.

Q. Who have you gotten that from?

A. Part from Mr. Thornhill and part from Mr. Ahearn, and part from Mr. Bremer.

Q. If you had run short you could have gotten more money from the Pinkertons?

A. That is what I was told.

54 Redirect examination.

By Mr. FOX:

Q. Now, Mr. Ferguson, when and where was the first time you met Ahearn; how long after the 15th of September, 1911?

A. I am not quite sure whether it was two or three days after the robbery in the bank. I think it was the second night in Mr. Lesbies' store.

Q. Did he come to you?

A. Yes.

Q. With whom?

A. With the Chief of Police.

Q. Before that you had never seen Mr. Ahearn?

A. No, sir."

Mr. BATTLE: I want to have it understood again the reception of this testimony is not to be construed as any waiver of any right, or objection or exceptions that have been taken.

Mr. ROSE: I think, as a matter of fact, there was no question objected to.

Mr. BATTLE: Yes, there were a few.

Mr. BATTLE: I move, if your Honor please, to dismiss these proceedings, and make a separate motion in these charges, first on the application for the extradition of the prisoner on the charge of breaking into the Bank of Montreal, at New Westminster,  
55 on the 15th of September, 1911, and stealing some \$271,000. I move to dismiss the proceedings and to discharge the respondent upon the ground that the testimony here has failed to



show any ground why he should be held to wait for extradition. The testimony has entirely failed to make out the contention of the Demanding Government and is insufficient to warrant the detention of the accused. On that ground, as well as the objections which have been taken, I move to dismiss the proceeding and discharge the prisoner, and wish to submit a brief I have prepared.

As to the second charge, of breaking into the garage, I make the same motion, on the same ground.

The COMMISSIONER: Will next Monday do you?

Mr. FOX: Unless I get another telegram.

The COMMISSIONER: The case is closed.

Decision reserved until Monday, March 4, 1912; counsel to exchange briefs in the meantime.

56 UNITED STATES OF AMERICA,  
*Southern District of New York:*

In the Matter of the Application for the Extradition of JOHN McNAMARA, under the Treaties Between the United States and Great Britain, on the Charge of Burglarizing the Garage of Thomas J. Trapp.

Before John A. Shields, Esq., U. S. Commissioner.

NEW YORK, March 8, 1912.

Appearances:

The Commissioner,

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

Abram J. Rose, Esq., for the Bank of Montreal.

The presence of the accused was waived by consent of Counsel for the accused.

The COMMISSIONER: I have carefully considered the testimony offered in this case, and carefully examined the briefs submitted, and I am of the opinion that the testimony offered on the charge of burglary in breaking into the bank at New-  
57 minster, in the Dominion of Canada, is too vague and unsatisfactory, and the motion to dismiss on this charge is granted and the defendant is discharged.

On the charge of breaking into and entering a building occupied as a garage, I am of the opinion, from the testimony produced, that the Demanding Government has made out a prima facie case, and will hear counsel for the defendant as to any testimony he may have to offer on that charge.

Upon Motion of Mr. Battle the examination is adjourned to Thursday, March 14, 1912 at 2 o'clock, for the purpose of introducing testimony on the part of the defense.

58 In the Matter of the Application for the Extradition of JOHN McNAMARA.

NEW YORK, *March 14, 1912.*

Appearances:

The Commissioner.

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

Abram J. Rose, Esq., for the Bank of Montreal.

The Accused, in person.

RICHARD J. BUTLER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. BATTLE:

Q. What is your business, Mr. Butler?

A. I am in the spring water business.

Q. What is the name of your company?

A. Sagamore Spring Water Company.

Q. Are you president of that company?

A. Yes, sir.

Q. Where do you reside?

A. 366 West 27th Street.

Q. You have been a member of the Assembly of the State of New York have you not?

A. 1903.

59 Q. And this Sagamore Spring Water Company is a concern engaged in the business of selling water?

A. Selling water to the cafés and hotels and restaurants.

Q. And in the course of your business as President of that company, do you have occasion to go around to these restaurants and hotels and sell water?

A. Yes, sir, quite often.

Q. And do you go to Shanly's Café, northwest corner of 43rd Street and Broadway and sell water there?

A. In there nearly every day.

Q. Do you remember Friday September 15th, last?

The COMMISSIONER: 1911?

A. Yes, sir.

Q. Did you go — Madison Square Garden the night of Friday September 15th?

A. Yes, sir.

Q. That was the fight between Jim Flynn and Carl Morris?

A. Yes.

Q. It was a boxing contest at the Madison Square Garden that evening?

A. Yes.

Q. That was a duly licensed boxing contest held under the laws of the State of New York?

Mr. ROSE: Objected to.

A. I seen the fight.

Mr. BATTLE: I would like to offer here, Mr. Commissioner, with the consent of Mr. Fox and Mr. Rose, the certificate of Mr. Charles Pollack, who was manager there when that fight took place on the 15th of September, at Madison Square Garden.

Mr. ROSE: I understand the witness says he was there.

Mr. BATTLE: Yes, I want to show by this witness that this was a public occasion. It was a legal prize fight.

Mr. FOX: Objected to as incompetent and not properly proven.

The COMMISSIONER: Mark it for identification.

Marked Defendant's Exhibit 1 of this date for identification.

Q. I understand then, Mr. Butler, that you went to Madison Square Garden on the evening of Friday September 15th?

A. Yes.

Q. What was it took place there; what took place at the Madison Square Garden and what took you there?

A. To see this fight.

Q. Between whom?

A. Between Morris and Flynn.

Q. Jim Flynn and Carl Morris?

A. Yes.

Q. You remember that occurrence well, do you?

A. Yes, sir.

Q. What is it that fixes that in your mind?

A. It was a very brutal contest; one of the worse fights I have ever seen, and I have been around a lot of them.

Q. Was there a big crowd there?

A. Yes, sir, turned them away from the door.

Q. Do you remember the next day, being at Shanley's Café?

A. Yes, sir.

Q. That was the day after the fight?

A. Yes, sir.

61 Q. September 16, 1911?

A. Yes, sir.

Q. What time were you at Shanley's Café?

A. I was there several times during the day, and in the evening.

Q. Were you there in the afternoon?

A. Yes, sir.

Q. When you were there in the afternoon what took place; what did you see there?

A. Well, I was in the café and I always mingle in with a number of people there—

Q. Did you see a number of people in the café?

A. Yes, sir.

Q. Did you engage in conversation with any of them?

A. Yes, sir, always do when I go in there.

Q. Were you introduced to the defendant there at the café on that occasion?

A. Yes, sir.

Q. Who introduced you?

A. There was a number of them at the bar and I just can't call off-hand who introduced me, but I was introduced to Mr. McNamara at that time.

Q. How were you introduced to him?

A. McNamara.

Q. Are you positive that this defendant here is the Mr. McNamara you were introduced to?

A. Yes, sir.

Q. Did you have any conversation with him or hear him talk?

A. Well, there was a general conversation. I talked about the fight and then we got out.

Q. Did you hear McNamara say anything in the course of the conversation?

A. I don't know. We were all talking general all around—talking general.

Q. Was there anything said about Australia in the conversation?

A. I don't remember anything about Australia.

Q. Mr. McNamara was talking about the fight?

A. Yes, sir.

Q. Along with these others?

A. Yes, sir.

Q. Where were you standing at the time of this conversation?

A. Right up against the bar.

Q. In Shanley's Café?

A. Yes.

Q. Was McNamara standing up or sitting down?

A. Standing up.

Q. How close were you to him at that time?

A. I was just like we are here now, at the bar.

Q. And you shook hands with him when you were introduced?

A. Yes, sir.

Q. You are positive this is the man here?

A. Yes, sir.

Cross-examination by Mr. Fox:

Q. Have you ever seen him since that time before today?

A. I have seen him on a couple of occasions. I seen him again ever at Dowling's right across the street there.

Q. How long ago was that?

A. Well, I figure I have seen him a couple of times after that—I guess about two or three weeks after or four weeks after that just to say how are you to him, because when I was introduced to him I just felt like I would like to say how are you. I wasn't very friendly with him and I didn't want to make myself too familiar. I didn't know the gentleman.

Q. The second time you met him was when and where?

A. I seen him at the bar. I only just bid him the time of day.

Q. The only places you have met him then before you have seen him here today were in bar-rooms?

A. Yes, sir.

Q. What business was given to you if any at all was given as his business when he was introduced to you?

A. I never found out; I never asked it.

Q. And in the course of your going into Shanley's, as you say many times a day, are you frequently introduced to people there?

A. Yes, sir, I am introduced quite often to quite a number of people.

Q. And you can remember the days—very days that you are introduced?

A. I can remember that day. It was the day after the fight.

Q. Of course you would. Did he tell you it was the day after the fight you were introduced to him?

A. Well, the conversation came up—

Q. Who told you that you were introduced to him the day after the fight, since the introduction? You didn't make a memorandum of the introduction at that time, did you?

A. No, I remember meeting Mr. McNamara and this of course was in the papers, and I asked questions then.

Q. Of whom?

A. Of Mr. Conroy.

Q. Who introduced you to him that day?

Mr. BATTLE: McNamara, you mean?

Mr. Fox: Yes, McNamara of course.

64 A. I think it was Fleming or Williams.

Q. Was Conroy there at Shanley's the day you were introduced to him?

A. No, sir, I didn't see Mr. Conroy there.

Q. How many people were you introduced to on the 16th of September, the day after this fight?

A. Oh, I may be introduced to three or four or five.

Q. Give me their names, besides this man?

A. Well, Mr. O'Brien.

Q. Where is he?

A. I don't know where he is, sir. I can remember that name, O'Brien.

Q. And you remember it on that particular day?

A. Yes, sir, I can remember I was introduced to Mr. O'Brien.

Q. By whom?

A. I can't recall who introduced me.

Q. Well, besides O'Brien tell us another name?

A. Well, now, I cannot accurately state any other name. I just can't refresh it now unless it was brought to my memory.

Q. Who came to see you about being a witness in this case?

A. No one came to see me. I was discussing it in Dowling's. I discussed it with Conroy.

Q. When?

A. Well, I have several times.

Q. The first time?

A. I guess it must have been about three or four weeks ago.

Q. Sure it wasn't before that?

A. No, sir.

Q. You say that you saw in the newspapers that this man had been arrested. How long ago; I don't expect you to remember the date?

65 A. I can't call the date.

Q. How long ago would you say, measured by weeks?

The COMMISSIONER: He means about what time.

The WITNESS: I just cannot remember that.

Q. Was it three or four weeks ago?

A. I don't think it was. I think it was before three or four weeks ago.

Redirect examination by Mr. BATTLE:

Q. Then Mr. O'Brien, that you mentioned, Mr. Butler, was he introduced to you in the same group or at the same time that McNamara was introduced to you?

A. No, I have a habit of walking up and down the bar and sometimes I am introduced to a man probably I might not remember, and sometimes I would.

Q. O'Brien, the man you spoke of, was he introduced at Shanley's Café that same afternoon?

A. Yes, sir.

Q. What is it that makes it clear in your mind that this was the day after the fight; state everything that makes it clear in your mind?

A. I was asked about it, in the conversation, do you remember that date, and I says certainly I remember the day, and I remember meeting Mr. McNamara.

Q. Was McNamara talking about the fight?

A. They were all talking about it.

Q. The fight was just the night before?

A. Yes.

Q. And that was the general topic of conversation?

A. Yes.

Q. Didn't McNamara say anything about having been interested in prize fighting himself?

66 A. No, I didn't hear any conversation at all about that.

Recross-examination by Mr. FOX:

Q. Is it not a fact that you have just said in your answer in response to counsel's question that your attention was called to the fact that that was the day after this fight that you were introduced to him that fixes the 16th of September as the time?

A. That is the way I can remember it.

Q. That is what fixes it as of that day?

A. Yes, sir.

Q. Outside of your attention having been called to that fact, you could not tell when this occurred, as to the particular day?

A. No, I hardly think I can remember that, but I could remember the day after the fight.

Q. And that is the way you fixed, because you were told it was the day after the fight, the fact that you were introduced to him?

MR. BATTLE: Not because he was told; because he remembers it.

A. The day after the fight I remember being introduced to Mr. McNamara. The fight fixes the date.

Q. But until your attention was called to the fact that it was the day after the fight that you were introduced to him you would not remember it to have been the 16th of September, would you?

A. No, unless I was told about the date.

67 Redirect examination by Mr. BATTLE:

Q. Did anybody tell you it was the day after the fight you met him? You knew that yourself?

A. I knew that myself.

Q. You remember distinctly that it was the day after the fight that you met him?

A. Yes.

Recross-examination by Mr. Fox:

Q. What was there about him or his conversation on that particular occasion that would fix him in your mind as of that particular day?

A. There was nothing about him any more than any other man I would see.

Q. And you are introduced, in the course of your perambulations in the course of your passing around these places to a great many people?

A. Yes.

Q. About how many people would you be introduced to on an average?

A. Well, tonight you might come up to Dowling's and see me introduced to half a dozen people just all standing there and seeing me introduced. That is the reason I am doing business for these water people.

Q. You then would say that you were introduced on an average to four or five people every day?

A. Yes, sir.

Q. Whom you had never met before?

A. Yes, sir.

Q. Now, give us the name of any man you were introduced to on the 20th day of September, 1911, for the first time?

A. Well, I don't think I will be able to give you the name of a man I was introduced to on the 20th of the month, but in  
68 an occurrence where a man would be in trouble I can remember that if I was introduced—if a man was in trouble.

Q. You could remember that the man had been introduced to you?

A. Yes.

Q. Now, the very day you were introduced to him you could remember that by reason of the fact he was in trouble?

A. Well, if there was some occurrence of the description of this that could happen down there I could easily remember that. That is all a man could remember.

Q. I am just testing the average memory. Your memory may be

better than mine. Now, outside of this fact that this fight took place on the 15th of September you are unable to fix the date you were introduced to this man except you say it was the next day?

A. It was the day after the fight, yes, sir.

Redirect examination by Mr. BATTLE:

Q. How often was it that you met him after this occasion—you met McNamara?

A. Five or six occasions I think.

Q. Where was it you met him after that?

A. I have seen him in Dowling's; he has been in Dowling's.

Q. That is Dowling's Café?

A. Right opposite Shanley's—right opposite and across the street at 43rd Street and Broadway.

Q. You go into Dowling's Café to sell your water too, don't you Mr. Butler?

69 A. Last night, Mr. Fox, I walked over from Shanley's to Dowling's—I walked over there last night eight times; four times I was in Shanley's and four times in Dowling's last night.

Q. You visited both places?

A. I visited both places and the Metropole and the Cadillac.

Recross-examination by Mr. Fox:

Q. Outside of that little run you didn't go anywhere else?

A. Bar-tenders will introduce me to men. Men will drink water and I like to be introduced to them.

Q. It is part of your business to be introduced to people and drink with them?

A. Yes.

Q. How many men do you remember by name you were introduced to since the 15th of September until the first of this month, that you never met before?

A. Well, I was introduced I guess to 20 men, Mr. Fox—I guess I was introduced to about 20 men in Syracuse. Now, I can remember these men, if it was brought to my attention, people who introduced me.

Q. From your memory of the incident at this time you could not name them?

A. I would be able to name them.

Q. If the men that introduced them to you came and told you that this is the man you met on such a day that would bring it back to your mind?

A. Yes, sir, it would.

70 DAVID C. THORNHILL, a witness called on behalf of the defendant, being duly sworn, testified as follows.

Direct examination by Mr. BATTLE:

Q. What is your business?

A. General Superintendent, Pinkerton's Detective Agency.

Q. That is a private detective agency here in New York, is it not?

A. Yes, sir.



Q. And has agencies all over the country?

A. Yes, sir.

Q. And pays especial attention to matters in connection with banks, doesn't it?

A. Yes, sir, in a criminal line.

Q. Do you know of a reward being offered for the detection of the persons who were connected with the alleged burglary of a bank in New Westminster, 15th and 16th of September last?

A. I do.

Q. How much is that reward?

A. I think it is \$5,000 for arrest and conviction.

Q. By whom was that reward offered?

A. By the Bank of Montreal.

Q. Is there any other reward except that?

A. No, sir. Ten per cent of all moneys recovered.

Q. \$5,000 down and ten per cent of all moneys recovered?

Mr. FOX: I object to that question, "\$5,000 down."

Mr. BATTLE: Withdraw the word "down."

Q. You know this man Ferguson who has testified here, do you not?

A. I do.

71 Q. Is he still here?

A. He is not.

Q. How long was he here?

A. Probably four or five weeks.

Q. Was he under the care of your agency all the time he was here?

A. Well, he called there daily.

Q. And you have been attending these hearings every day, haven't you?

A. I have.

Q. And your agency working on this case and trying to get that reward?

A. Yes.

Mr. FOX: I object. This is a different case. The Montreal case we are through with.

Mr. BATTLE: The same witnesses.

Q. The man Ferguson I speak of is the same man who testified here?

A. The same man who testified here.

(No cross examination).

72 JOHN GRIBBEN, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. BATTLE:

Q. Mr. Gribben, what is your business?

A. I am manager—wine steward at Shanley's 43rd Street and Broadway.

Q. 43rd Street and Broadway?

A. Yes.

Q. How long have you been there?

A. I have been there since the place was opened, that has been a year and a half. It was opened on November 3rd.

Q. You have been up there for how long?

A. About a year and a half I believe; since the place was opened.

Q. And before that time?

A. I worked at the Knickerbocker Hotel.

Q. In what capacity did you work at the Knickerbocker Hotel?

A. I was bar-tender, and was what they call Captain behind the bar.

Q. And from there you went to "Shanley's" where you are wine steward?

A. Yes, sir.

Q. Do you remember the fight or boxing contest between Carl Morris and Jimmy Flynn at Madison Square Garden on September 15th, 1911?

A. Yes, sir.

Q. On the afternoon of the day following that fight did you see this defendant John McNamara?

A. I did. It seems as though it was the day after, because he was in the fight to the night before that.

Q. McNamara said so?

A. Yes.

73 Q. Where was it you saw McNamara?

A. Standing in the bar—in the front bar.

Q. At "Shanley's" Restaurant?

A. Yes, at "Shanley's" Restaurant.

Q. 43rd Street and Broadway?

A. Yes.

Q. Who was with him?

A. There was two or three or four people that I knew that was with him.

Q. Who were they?

A. One was a man named Johnny Burns and Harry Hornthall, from what I understand his name is. I know quite a few people that come in there and they happened to be standing there with him.

Q. Were you introduced to McNamara?

A. He was introduced to me.

Q. Who introduced McNamara to you?

A. Hornthall.

Q. Was there any conversation after you were introduced?

A. Yes, the conversation was about the fight. McNamara—it seemed as though he was going through the maneuvers of the fight, as to what a poor excuse this was for a White Hope—this Carl Morris, the beating he took.

Q. Who won the contest?

A. Why, Flynn?

Q. And you talked with McNamara yourself, or heard him talk?

A. I didn't talk very long. I didn't stay very long. I didn't stand at the bar because I had business to attend to.

Q. You heard McNamara talking?

A. Yes.

Q. And the subject was this fight of the night before?

A. Yes. It seems as though everybody was talking about that fight at the time.

74 Q. It was the topic of conversation that day?

A. Yes.

Q. You are sure this is the man here you talked with that night—that afternoon?

A. Yes.

Q. Under what name were you introduced to him?

A. McNamara.

Q. Mr. McNamara?

A. Mr. McNamara.

Q. Did you see him after that?

A. I did not. No, I didn't see him after that.

Q. You know Mr. Richard Butler, do you not?

A. Yes, we buy water of him.

Q. You buy water from the Sagamore Spring Water Company?

A. Yes.

Q. Does Mr. Butler come into your place frequently?

A. Very frequently, yes.

Q. Do you happen to recall whether he was in there that afternoon?

A. I hardly remember whether he was there or not because I didn't stay around.

The COMMISSIONER: Did you ever see him before that day?

The WITNESS: Who, McNamara?

The COMMISSIONER: Yes.

The WITNESS: No. He was talking about some place in Chicago where he owned a saloon, and I was born in Chicago but I didn't remember the place.

Q. McNamara was speaking of some place in Chicago that he owned?

A. Yes, I remember that.

Q. And he was also talking about this prize fight?

75 A. Yes, he was. That was pretty near all he was talking about.

Q. When was the fact that McNamara had been arrested first brought to your attention?

A. Why, it seems as though it was—may be three days after—four days after, somebody came to me—who it was I forget now—Johnny Burns or somebody were telling me did you ever meet him in Shanley's, which I did. He was telling me he was arrested. He told me he was arrested then.

Q. After that did you talk to anybody else and who else did you talk to about this case?

A. I talked to people about it. I didn't pay no attention to it at all. I told the truth when I said I saw him, which I did.

Q. You have no interest in the case at all?

A. No, I have not. I met the gentleman that time and that is the only time I ever did see him.

Q. You are sure this is the man?

A. Yes, I am sure.

Cross-examination by Mr. Fox:

Q. Who is Johnny Burns; what is his business?

A. From what I understand he runs a kind of a rooming house in the vicinity around in the neighborhood.

Q. Do you spend much of your time in this bar room in and around there?

A. I am in and out quite often during the day.

Q. Do you remain there any length of time?

A. No, only between five and six, when the business is on. Then we are doing quite a business and I have to be around, and  
76 so forth.

Q. Now, on this particular day you speak of when you went into this bar room, was this man there?

A. He was there, yes.

Q. What was he doing at that time?

A. He was standing down at the far end of the bar—what we call the front end of the bar. I says "Hello, Johnny" to Johnny Burns, and he called my attention to him talking about the fight—to McNamara talking about the fight, saying what a poor excuse he was for a White Hope.

Q. That was what this man was saying?

A. Yes, he was saying that.

Q. Was there anybody else in that bar room talking about that fight?

A. It seems there was quite a few different people at the bar talking about the fight. It seems as though the people who did talk about it happened to be there to see the fight.

Q. That was after this particular time when you say you saw this man there?

A. Yes, all night long they were talking about it.

Q. Were you introduced to him on that occasion?

A. I was introduced to him on that occasion, yes.

Q. By whom?

A. By Hornthall.

Q. Were you introduced to anybody else that afternoon?

A. No, I wasn't. I knew the others that were there standing at the bar. There is a lot of them I don't know by name. I may know them to say how do you do.

Q. And this was the only man in the place at that time that you didn't know?

A. Yes.

77 Mr. BATTLE: In that party?

The WITNESS: Yes, in that party.

Q. How many were in this party?

A. Oh, there must have been four.

Q. Can you name the four of them?

A. Hornthall, O'Brien, this McNamara, and Conroy.

Q. Conroy was there that day then?

A. Yes, quite sure it was Conroy.

Q. Does Conroy go in there often?

A. Yes, he does. He has his luncheon there and quite often has his dinner.

Q. You hadn't seen, as I understood you to say, Mr. McNamara, this man, ever before?

A. No, I had not.

Q. And you have never seen him since until today?

A. Never have seen him since until today.

Q. And you were in his company for how long a period at that particular time?

A. Pardon me I didn't get you?

Q. How long were you with him?

A. I stood there for may be fifteen or twenty minutes.

Q. And this man was talking about the fight the whole time?

A. Yes. The reason why I recognized him was because he impressed me so, talking about it.

Q. And all the other people around the bar at that time were talking about the fight at that time too?

A. Yes.

Q. What was it about this man's conversation that made such a deep impression on you?

78 A. I don't know. He kind of impressed me the way he talked. The manoeuvres he went through—he was kind of illustrating some of the punches. It seems as though he was at the fight.

Q. He was very voluble—I mean he talked a good deal?

A. Yes.

Q. And he talked continuously with slight interruptions?

A. He didn't do all the talking.

Q. He talked as much as any of them?

A. Yes.

Q. And you would say that none of them talked as much as he did?

A. No.

Q. And you would say of him that he was a talkative man there—would you say that of him on that occasion?

A. Yes, I would.

Q. Who came to speak to you, or called your attention to the fact that you had been introduced to this man on that day?

A. Johnny Burns says to me do you remember this McNamara that was standing talking about the fight at the end of the bar there that Mike—Hornthall—he introduced him to you, and I said yes I do.

Q. That was when, please, when this man was arrested?

A. He was arrested then, yes.

Q. So that from the time you were introduced to him, as you say on the 16th of September, until this man was arrested in January, your attention had not been called to him in any way?

A. No, sir, outside of talking about his arrest.

79 Q. That was the first time your attention was called to this man subsequent to your introduction—at the time of the talk about this man's arrest?

A. Yes.

Q. So he had been arrested before you had heard any more about him at all?

A. Yes, they showed me the picture and asked me if I recognized his picture and I said I did.

Q. And that was when he was arrested?

A. Yes.

Q. How frequently had he been in that bar room to your knowledge prior to that time?

A. That is the only time I ever seen him.

Q. Had anybody told you what his business was?

A. No, sir.

Q. From his conversation at that time did you make any inquiry as to what his business was?

A. No, sir.

Q. Was he drinking any?

A. I think he was drinking—I don't just exactly know what he was drinking.

Q. Not Sagamore water?

A. Beer or water or something. I know there was water and beer on the bar.

Q. Do you remember the clothes he had on that day, the color and style of them?

A. He had an overcoat on—a kind of dark overcoat.

Q. And the hat, you could not say as to that?

A. I could not.

Q. You are sure he had an overcoat on?

A. I am not positive.

Q. This is the afternoon?

A. Well, evening—late in the afternoon.

80 Q. Well, what time now was it?

A. Oh, it must have been around 5 o'clock.

81 HARRY HOHENTHAL, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. BATTLE:

Q. Where do you live, Mr. Hohenthal?

A. 257 West 43rd Street.

Q. How long *long* have you been residing there?

A. Eight years.

Q. What business have you been engaged in?

A. Manufacturer.

Q. Of what?

A. Razors.

Q. Are you acquainted with John McNamara this defendant here?

A. I am.

Q. How long have you known him?

A. About fourteen years.

Q. Where was it you first met him?

A. Chicago.

Q. Was he engaged in business in Chicago at that time?

A. He was.

Q. What business did he have?

A. Liquor business.

Q. Where was his place of business?

A. Wabash Avenue, between 12th and 13th.

Q. Retail liquor store?

A. I remember the number, 1234.

Q. A retail liquor store?

A. Yes.

Q. How long ago did you say that was?

A. That was between 1896 and 1898.

Q. Were you living in Chicago yourself at that time?

A. I was.

Q. How long did you know him in Chicago?

A. About three years.

82 Q. After that time did you see him?

A. I did.

Q. Where?

A. In Frisco.

Q. Did he go out to Frisco?

A. I don't know whether he went from Chicago but I met him in Frisco later.

Q. About what year was it when you met him in San Francisco?

A. In 1903.

Q. Was he in business there at that time?

A. He was.

Q. What business was he in there?

A. Liquor business.

Q. Retail liquor store?

A. I think so.

Q. Where was it, in San Francisco?

A. It was across from some leading hotel; I really don't know the street because I am not familiar.

Q. That was in 1903?

A. Yes.

Q. Were you in Frisco then for any length of time?

A. No.

Q. When did you see him next after that?

A. I saw him in September last year.

Q. Of 1911?

A. Yes.

Q. Where was it you saw him first in September last?

A. 43rd and 7th Avenue.

Q. What place?

A. Shanley's—he wasn't in Shanley's; it was on the street I met him.

Q. Where was it?

A. Right on the boulevard—on the street.

Q. Did you speak to him?

A. I did.

Q. Was that the first time you had seen him?

A. That was the first time I had seen him in nine years.

83 Q. What conversation did you have at that time?

A. Where it was—the topic of conversation was old friends and people we had met since we had met possibly, and in regard to a prize fight that took place the night previous.

Q. What fight was that?

A. Morris and Flynn.

Q. Had you been at the fight yourself?

A. No, I had not.

Q. But the fight had taken place the night before?

A. Yes.

Q. What did McNamara tell you about the fight?

A. He was very much enthused over the fight. Since I know McNamara he has been a sporting man and mixed in one way and another with prize fighters and so on.

Q. He has always taken an interest in sports?

A. Always.

Q. Was this conversation on the sidewalk?

A. It was on the sidewalk and in the bar; in fact it lasted all night; it lasted until midnight.

Q. What did you do when you met him?

A. We went and had a drink.

Q. Where did you go?

A. Shanley's.

Q. Shanley's café?

A. Yes.

Q. Which one of Shanley's cafés?

A. 43rd Street and Broadway.

Q. Did you go in with McNamara?

A. I did.

Q. What happened after you went in?

A. There was a great many of my friends in there and I introduced Mr. McNamara around. I should say there was six or  
84 seven during our stay in this café. They would drift out and others would come in and we stayed there, and it may have been half past seven—we stood there from four until half past seven.

Q. Did you see Mr. Gribben there?

A. Yes.

Q. Did you introduce Mr. McNamara to Mr. Gribben?

A. He was introduced while I was in his company.

Q. Do you remember seeing Mr. Richard Butler there?

A. Yes.

Q. Was Mr. Burns there also?



A. Yes, sir.

Q. How long did you stay in the café?

A. Stayed there until 12 o'clock.

Q. You stood at the bar how long?

A. Four hours—three or four hours.

Q. Talking and drinking?

A. Yes, and the topic of the conversation was the fight the night before.

Q. After you stood there for three or four hours talking and drinking what did you do; what was the next thing you did?

A. Went and had some supper.

Q. In Shanley's Restaurant?

A. Yes.

Q. How long did you stay at supper?

A. Till after 12 o'clock.

Q. Who had supper with you?

A. Just McNamara and myself.

Q. You separated about midnight?

A. No, we went to another café.

Q. How long did you stay there?

A. Till about half past one; then we separated.

85 Q. How soon after that did you see him?

A. I saw him most every day after that.

Q. For how long a time?

A. For two weeks.

Q. Where would you see him?

A. I would meet him in the Cadillac or Rector's. I met him once in Churchill's Cafe, 49th Street and Broadway.

Q. You met him in the cafés and restaurants in that part of Broadway?

A. Yes, and in the Breslin.

Q. And after seeing him for those two or three weeks did you see him?

A. I went away.

Q. When was the next you saw or heard of him?

A. I read in the Chicago paper where he was arrested here for some bank burglary.

Q. When was that, about?

A. I can almost give you the date. It was between January 5th and 10th.

Q. Where were you at the time?

A. I was in Chicago.

Q. Did you come back to New York?

A. No, I didn't come back to New York until the 25th of January—between the 25th and the 1st of February.

Q. When you got back did you communicate with any of McNamara's friends or talk to them—did you happen to meet any of his friends?

A. Well, no more than they were my friends and people I had introduced him to.

Q. Did the subject come up about his having been arrested; was mentioned and talked over?

A. Oh, yes.

86 Q. How did the subject of your having talked with him in Shanley's Café that night—how did that first come up; how did you come to talk about that?

A. I don't understand.

Q. Who was the first person you recall you mentioned the fact that you had met McNamara in Shanley's Café on September 16th?

A. To several people. It wasn't exactly the date that was mentioned. The date was never mentioned, but the way it was mentioned I met McNamara in Shanley's was the Flynn & Morse fight.

Q. It was the day after the fight?

A. I could not say whether the fight was on the 14th or 15th, but it was the day after the fight, after the Morris-Flynn fight.

Q. And the conversation you had with him was about the fight the previous evening was it?

A. That was the topic of conversation.

Q. Who said anything to you about coming down here and testifying?

A. Mr. Oakes, an attorney.

Q. How did the subject happen to come up?

A. I don't know how the subject happened to come up but he came after me and asked me whether I knew McNamara and I told him I did, very well.

Q. You told him about your meeting McNamara?

A. Oh, yes, went all through it?

Q. What did he say to you about coming down?

A. He asked me whether I would come and I told him I would be pleased to come.

Q. You have no interest in the case whatever?

87 A. Absolutely none, no, sir.

Cross-examination by Mr. Fox:

Q. Does Oakes live at the Cadillac?

A. No, Mr. Oakes lives in Brooklyn.

Q. What is his first name?

A. That I could not tell you. I think I have one of his cards here.

Q. Does he frequent Shanley's?

A. Never met him before there; never saw him.

Q. And he came to you and spoke to you about this case?

A. He did.

Q. And that was when?

A. Six or seven weeks ago; perhaps not quite that long; five weeks—between five and seven weeks ago.

Q. How did he come to go to you?

A. That is more than I can tell you.

Q. Did he give any reason for coming to you?

A. Yes, he says he was interested in the McNamara case and I

said I was a friend of McNamara's and that I was with him and I told him I was there.

Q. When do you say you went to Chicago?

A. In January—between the 5th and the 10th—some time in there.

Q. That you went to Chicago?

A. Yes.

Q. When do you say this man was arrested?

A. I don't know. I read it in the Chicago paper.

Q. After you had gone there?

A. Yes.

88 Q. Prior to the time of your going to Chicago, between January 5th and 10th, had you been out of New York since you met McNamara at the time you stated?

A. No.

Q. And you would meet McNamara how often?

A. Quite often; two or three times a week.

Q. Where did he live?

A. That I could not say.

Q. And where did you meet him?

A. Oh, at different cafés and different hotels.

Q. All over New York or within this Broadway—this 42nd Street district?

A. In New York, if you put it that way.

Q. You put it that way. Where did you meet him outside of Shanley's?

A. In Churchill's.

Q. Where else outside of that?

A. The Breslin.

Q. Where else?

A. Rector's and at the Cadillac.

Q. Ever meet him down town?

A. No.

Q. What was the name of that hotel he ran in San Francisco?

A. That I could not say.

Q. Or saloon I should say?

A. I think the name was the Green Turtle.

Q. Wasn't it the Turtle Inn?

A. Well, may be it is Inn.

Q. Wasn't that the only place in San Francisco of his that you went in?

A. Yes.

Q. Do you know or did you know anything about the reputation of that saloon?

A. No, sir, I did not.

Q. How often were you in it?

A. Twice.

Q. Within how short a period; within a week?

A. Yes.

89 Q. Did you know him at the time you went in there?

A. Oh, yes.

Q. Did you know anybody in there at the time—any of the frequenters of that place?

A. No, I didn't know any one only him. I was practically stranger there.

Q. And you were not introduced to any one while you were in there?

A. No, sir.

Q. So as to the character of that place you know nothing?

A. Nothing about it.

Q. Did you ever know of his keeping a place called the Log Cabin in Frisco?

A. No.

Q. This place that you have referred to in Chicago what was that called?

A. It was called the 1234.

Q. How frequently did you visit that place?

A. Once or twice a week.

Q. And how long did you live in Chicago around that period?

A. I lived there until 1897.

Q. And you first met him when?

A. In July.

Q. When, in 1896, wasn't it?

A. 96 or 95—between 95 and 97.

Q. How long did you know him in Chicago at that time?

A. About three years.

Q. And you frequented his place once or twice a week?

A. Yes.

Q. Did you ever hear the reputation of the place he kept in Chicago?

A. No.

90 Q. Do you know whether it had a police record; had you ever heard of this man being arrested before this occasion?

A. Never.

Q. Do you know whether it had a police record?

A. I don't.

Q. Where were you, in Frisco, in 1910?

A. No, sir.

Q. If I understand you then, you did not meet this man in New York until September 15th or the 16th, 1911?

A. No, not since I seen him in Frisco.

Q. So the first time you met him was on that date?

A. Yes, sir.

Q. And what fixes that date in your mind as the fact that it followed this fight that has been spoken of?

A. Well, the fight was the topic of conversation.

Q. Are you sure that particular fight was the topic of conversation?

A. Yes, absolutely.

Q. It wasn't the fight that occurred four weeks later?

A. No, sir, it was the Morris-Flynn fight—it was in regard to the White Hope.

Q. You have heard considerable conversation about prize fights since September, haven't you?

A. Naturally.

Q. And considerable about White Hopes?

A. Yes.

Q. So that this Flynn & Morris fight was not the only White Hope—

A. Up to that time it was about the first fight we had ever had in the heavy weight line.

Q. Since that time there have been several others?

A. Yes, sir.

91 Q. So that all the time you met him here in New York you didn't know where he lived?

A. No, sir.

Q. Did you ever ask him where he lived?

A. No, sir.

Q. Did you ever meet anybody with him who you knew in Frisco or in Chicago?

A. I did not. I met him one night with a man by the name of Ryan, that I know very well, from New York here.

Q. Can you tell me what was the next heavy weight fight—if that is the proper description of it—after this Morris-Flynn fight?

A. I think about a month ago.

Q. And nothing between?

A. Nothing to amount to anything. This was under the National Sporting Club.

Q. What would you call a man like Keneday and Felzer; is that a heavy weight fight?

A. I am not familiar enough with fighters to know the men's weight.

Q. But by reason of hearing so much of it you keep posted?

A. Well, this particular fight.

Q. The only fight that you have ever heard discussed was this Flynn-Morris fight which made any impression upon you?

A. No, sir.

Q. What is the next one?

A. The Attel fight and Wolgast.

Q. Are they heavy weights?

A. No.

Q. They are not White Hopes?

A. This is the only one I ever took an interest in.

92 Q. So that so far as your knowledge and recollection goes the only prize fight of heavy weights or White Hopes or White Hope fights you have ever heard much about is this Flynn-Morris fight?

A. Yes, and on this one occasion too.

Q. Only on this one occasion and after that you have heard nothing more about it?

A. Oh, it has been the topic of conversation ever since.

Q. You say it is?

A. Yes, among the sporting class.

Q. So that the Flynn-Morris fight is the only fight that you know of in connection with McNamara talking about it?

A. Well, I could give you a little more than that. We were also discussing the Governor of Milwaukee passing that bill against the Wolgast fight. I think that was around that time or a little bit before.

Q. A little before the 16th of September?

A. I think that was.

MR. BATTLE: That is the action taken at Milwaukee?

THE WITNESS: Yes.

Q. Now, then, the date, as I understand it, which you fix, you fix solely upon the recollection you have that that date followed the fight?

A. Yes, sir.

Q. Have you ever had any business with McNamara?

A. Never.

Q. You have heard one of these witnesses here—I think it was the preceding witness—were you present at the time he was in this bar room?

A. I was.

Q. And he spoke of McNamara as being—as talking quite as much as the other people?

A. Yes, sir.

93 Q. And you have known McNamara for a long time?

A. From 1895 to today.

Q. Would you call him a talkative man?

A. I can't say I would.

Q. Isn't he just the reverse of being talkative, more inclined to be reserved than talkative; a good listener rather than talking?

A. No, he cuts right in on you.

Q. Is that under the influence of company?

A. No, it might be from the influence of a beverage. That makes a man talk a little more.

Q. Did Conroy talk to you about this case—Mr. Conroy?

A. It only came up in a conversation about McNamara being arrested for this robbery and one thing and another.

Q. Didn't Conroy speak to you about coming here to be a witness?

A. No, sir.

Q. Have you talked to anybody about this particular date as not the date September 16th, but as the date following the fight?

A. No, sir.

Q. And you never heard anything about the date particularly being the 16th of September until you came here today?

A. Well, I knew what the date was.

Q. How did you know?

A. Because I know they fought on the 16th of September.

Redirect examination by MR. BATTLE:

94 Q. Fought on the 15th or the 16th; this was the day after the fight you saw him?

A. Yes.

Q. Do you know what day of the month you met him on?

A. It was the 15th.

Recross-examination by Mr. Fox:

Q. Why did you say it was the 16th before?

A. That was a slip.

Q. Is that the only slip that has occurred?

A. I think so.

Q. How did Oakes come to see you?

A. I could not tell you.

Q. How long have you known Oakes?

A. Since he came to see me.

Q. Never before?

A. Never.

Q. Did he introduce himself to you or was he introduced to you?

A. He did.

Q. He introduced himself?

A. He did.

Q. Describe Oakes?

A. Oakes is a man weighs 125 pounds.

Q. And you never saw him before?

A. No.

Q. You are up on Broadway every day?

A. Yes.

Q. Now isn't his name Chandler Oakes?

A. I think that is his name.

Q. You never saw Oakes?

A. No.

Q. Were you in the Cadillac?

A. Yes.

Q. You never saw Oakes there?

A. No, sir.

95 ALFRED YOUNG, a witness called on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. BATTLE:

Q. Where do you reside?

A. 155 West 44th Street.

Q. What is your business?

A. Café, restaurant and liquor business.

Q. Are you connected with a café and restaurant at 155 West 44th Street?

A. Yes.

Q. What was your connection with that café?

A. Manager.

Q. What is the name of it; what is it called?

A. Green Turtle Chop House.

Q. Are you acquainted with the defendant here, John McNamara?

A. I am.

Q. Where did you first meet him?

A. San Francisco.

Q. What time was it when you met him in San Francisco; what year?

A. Well, it was the year of the big fight.

Q. What year was that?

A. 1910.

Q. Were you living in San Francisco or were you there on a visit at the time you met him?

A. I was on a visit. I was there quite some time.

Q. How long were you there?

A. I should judge about a year.

Q. Were you in business out there?

A. No, sir.

Q. Was McNamara engaged in business there at that time?

A. He was.

96 Q. What was his business?

A. Why, he had a place called the Log Cabin.

Q. Was it a saloon?

A. Saloon and liquor business.

Q. Retail liquor store?

A. Yes.

Q. Was it a restaurant also?

A. Yes, to the best of my knowledge.

Q. What part of San Francisco was that in?

A. It lays up close to the Park. What the streets are I don't know. It is outside the heart of the City a short distance.

Q. Was it at that time he also had a saloon there known as the "Turtle", or "Turtle Inn", or some such name?

A. No, sir, not to my knowledge.

Q. At the time you knew him the place he had was called the "Log Cabin"?

A. It was called the "Log Cabin".

Q. When did you leave San Francisco, about when?

A. Well, I came back to New York here the 27th of May.

Q. Of what year?

A. Last year.

Q. 1911?

A. 1911.

Q. When you came back to New York when did you next see McNamara?

A. I first seen McNamara in New York a couple of days before the big fight, that was the 15th of September.

Q. What do you mean by the big fight?

A. Carl Morris and Jimmy Flynn.

Q. You saw him a couple of days before that fight?

A. I did.

Q. Where was it you saw him?

A. Up in my place.

97 Q. Did you have a conversation with him?

A. Yes.



Q. What did you say; what was the substance of the conversation?

A. Well, he had—of course we were jesting about what the new White Hope would do.

Q. Which one of those men were regarded as the White Hope?

A. Well, they were both.

Q. They were both potentially White Hopes at that time?

A. Carl Morris was the unknown White Hope.

Q. Did McNamara tell you how long before that he had come East?

A. Well, he had just come in that day, because he had stayed at my place a day and a night.

Q. Did he say why he had come on?

A. Well, he was kind of enthused over this fight—had been very enthusiastic about Flynn. I know he was personally acquainted with him out in San Francisco.

Q. You knew that McNamara knew Flynn in San Francisco?

A. Yes.

Q. Did you ever see Flynn in McNamara's place in San Francisco?

A. I can't say I did.

Q. How do you know that Flynn knew McNamara out there?

Mr. Fox: Mr. McNamara told him.

The WITNESS: San Francisco being a small town naturally it is a kind of sporting headquarters.

Q. Was Flynn in San Francisco at the time you were there?

A. Yes.

98 Q. McNamara's was a sort of headquarters for sporting men wasn't it?

A. Yes, sir.

Q. How long before the fight was it you say you saw McNamara here in New York at your place?

A. A few days.

Q. How often did you see him from that time until the fight?

A. Well, he stayed at my place one night and I should judge he was around there—kind of stayed down there. He was there on and off.

Q. In and out?

A. He was in and out there.

Q. You say he spent one night in your place?

A. Yes.

Q. And did you go to the fight yourself between Morris and Flynn?

A. No, sir.

Q. When did you see McNamara at the time of the fight, as well as you remember?

A. I would not say positively but it was three or four days. He was running in and out.

Q. Do you remember whether you saw him any time after the fight?

A. Yes, I did see him one time after the fight.

Q. Do you remember hearing him speak of the fight?

A. Yes.

Q. Which one of those men was it that won, Morris or Flynn?

A. Flynn.

Q. And he was naturally pleased at that, McNamara?

A. Yes.

Q. Did he say he was pleased at it?

A. He did.

Q. And from that time on have you seen him?

A. I have seen him a couple of times since then.

Q. When and where was that?

A. In my place.

99 Q. About when was it you saw him after the fight?

A. The next time after the fight—I saw him there the next day or the day following.

Q. When was the next time you saw him within a day or two after the fight?

A. I didn't see him for a month or six weeks I should judge.

Q. You saw him again in your place?

A. My place, yes.

Q. During that time, about the time of the fight, was he drinking at that time?

A. Yes.

Q. What was he drinking?

A. Scotch whiskey.

Q. Was he drinking to some excess?

A. Yes, he was.

Q. And then you say you saw him about a month or two afterwards?

A. Yes.

Q. Then did you see him after that occasion?

A. Altogether I must have seen him about—two days before the fight—after the fight I may have seen him three or four times.

Q. Each time in your place?

A. Yes.

Q. When was the last time you saw him in your place?

A. I believe it was about Christmas.

Q. When did you first hear of his arrest?

A. Around New Year's I think.

Q. Some time after the New Year?

A. After the New Year; around that time.

Q. Some time in the month of January?

A. Yes.

100 Q. Who was it spoke to you about coming down here to testify; who said anything to you about the case?

A. This Oakes came to me.

Q. He is a lawyer and attorney?

A. Yes, he told me he was a lawyer.

Q. In this case?

A. Yes, he said he was interested?

Q. What did he say when he came to you?

A. He asked me if I knew McNamara.

Q. And did you tell him substantially what you have told us here today?

A. Yes, I told him and I told him how I knew him and what occurred around my place.

Q. And he asked you whether you would make an affidavit to that effect and you told him you would?

A. Yes.

Q. You have no interest in the case one way or the other?

A. No.

Cross-examination by Mr. Fox:

Q. You have an interest in the defendant though, haven't you; you would like to see him discharged?

A. Naturally I would like to see him discharged.

Q. Oakes? Had you ever seen him before he called on you?

A. Never did.

Q. And you confine yourself, I suppose, to your own place; that is you don't roam around Broadway?

A. No, I don't have much time.

Q. What kind of an establishment is yours; are you the proprietor of this establishment?

A. No, sir.

101 Q. Just the manager?

A. Yes, sir.

Q. Is it a hotel?

A. Well, it is—you can call it a hotel—it is a café and restaurant. We have rooms.

Q. You have a hotel register of course?

A. No, sir.

Q. Have you a hotel license?

A. No, sir.

Q. And you rent rooms?

A. By the week as a rule—permanent mostly.

Q. And McNamara occupied one of the rooms that you ordinarily let?

A. Yes.

Q. And you don't keep a list of your lodgers at all?

A. Well, no.

Q. I understood you the last time you saw McNamara before you saw him here was about Christmas?

A. Yes, around Christmas time.

Q. Now, starting from Christmas and going backwards, how long before Christmas was it that you first saw him?

Mr. BATTLE: What do you mean?

Mr. FOX: I mean after he saw him in New York.

Mr. BATTLE: He says the last time he saw him was Christmas.

Mr. FOX: I mean the very first time—how many weeks was it before Christmas when you first saw him in New York?

Mr. BATTLE: You mean the first time he saw him in New York?

The WITNESS: The first time I saw him in New York was  
102 around September month.

Q. Now, you speak of that and you don't follow what I said and you don't follow what I thought you were going to do. Now, this September figures in your mind very much—the month of September?

A. It is plain in my mind, yes.

Q. And this Morris-Flynn fight is very well fixed in your mind, and it is fixed in your mind in connection with McNamara, isn't it?

A. In one way, yes.

Q. Now, when Oakes came to see you about this affidavit or testimony that you were to give, did he mention the Flynn-Morris fight?

A. I don't know whether he mentioned it or whether I mentioned it, but we were speaking of the fight and it freshened my memory.

Q. Is it not a fact that he spoke of it?

A. That I would not say positively.

Q. You would not say he didn't?

A. No, I would not say he didn't.

Q. In the course of the conversation you remembered it was just about the time of the Morris-Flynn fight? You remember that that was what he said?

Mr. BATTLE: He didn't say that.

(Question withdrawn.)

Q. In San Francisco you met this man, as I understand it for the first time?

A. Yes.

Q. Where did you start from to go to Frisco?

A. Started from New York here.

103 Q. How long had you been in New York—born here?

A. I wasn't born here.

Q. Then I understand you were in San Francisco?

A. Yes.

Q. You started from New York to go to San Francisco and just prior to your leaving for San Francisco what was your business?

A. I was connected with the Werner Hotel, 32 West 45th Street.

Q. Were you the proprietor of that?

A. I was not.

Q. Have you ever owned any hotel?

A. No, sir.

Q. What has been your occupation chiefly?

A. Liquor business.

Q. Manager, bar-tender, etc.?

A. Yes, sir, bar-tender.

Q. And until you went to San Francisco you had never met McNamara, had you?

A. No, sir.

Q. Were you brought into his "Log Cabin" saloon there or did you go in of your own accord?

A. Why, I was out there a couple of times. The first time I got out there—

Q. In what year?

A. I mean a couple of times I was in his place.

Q. This is all in one year, 1910?

A. Yes.

Mr. BATTLE: You were in his place a couple of times?

The WITNESS: Yes.

Q. And only a couple of times?

A. About three times I should judge.

104 Q. Tell us just how many times you were there?

A. To the best of my knowledge it could not have been over three times.

Q. Did you go in there with anybody.

A. Yes.

Q. What were the names of those people?

A. I went in the first time with Tim McGrath.

Q. A New York man?

A. No, sir, a San Francisco man; and I went in there another time I guess with two or three of the boys.

Q. You don't recollect their names?

A. I know there was a party—I never went in the place alone; that I know.

Q. How long were you in the place on any one of these three times: the longest period of time you spent there?

A. I guess I spent an hour about every time I went out.

Q. Did you go to the Johnson-Jeffries fight?

A. I did, sir.

Q. Did McNamara go?

A. Yes, sir.

Q. Did you go in his company?

A. No, sir.

Q. How long were you in San Francisco in 1910—that is the longest period of time? Did you go out to the fight just and then come back?

A. No, I was out there about a year, that is in San Francisco. Most of the time I was at Los Angeles and small resorts.

Q. You never got up to Vancouver, did you?

A. Was I ever in Vancouver? No.

Q. Now, coming back to Oakes. Oakes came to see you?

A. Yes.

Q. He came alone?

A. Yes, sir.

105 Q. Introduced himself?

A. Yes.

Q. Did he ask you whether you knew McNamara?

A. He did.

Q. And he asked you if you saw him in New York in September?

A. He asked me that, yes.

Q. And you were not sure that you did see him in September just at the first time the question was put to you?

A. Oh, I was sure, yes.

Q. But as to the date—what time in September?

A. Yes, I was sure; positive of it.

Q. Before Oakes had spoken to you about the fight?

Mr. BATTLE: You are assuming that Oakes asked him.

Mr. FOX: Oakes did tell him and he will tell you so if you will give him a chance.

Q. Now, what is it? Didn't Oakes when he came in to you ask you if you saw McNamara in New York in September; that he did say, didn't he?

A. Yes, he asked me if I had seen him.

Q. And you answered what as to that?

A. I said yes that I had seen him before the fight—a couple of days before the big fight.

Q. And Oakes up to this time had not said a word about the fight?

A. I don't think he had; I would not say positively.

Q. Is it not a fact that he came in there and said practically this now—

A. I don't know.

Q. That he came in to you, after you had told him you  
106 knew McNamara and told him you saw him in September and he said to you substantially you remember you saw him just about the big fight and you said I saw him a couple of days before?

A. I don't know whether I said or he said, but I do know I said it was a couple of days before the big fight.

Q. After he had spoken?

A. As to that I don't know.

Q. Will you say he did say that?

A. I will not say yes or no.

Q. Now, did you ever go around with McNamara in New York anywhere?

A. No, sir, never went out of my place with him.

Q. You had known him, as I understand, since 1910? You had not met him before you met him in San Francisco?

A. No.

Q. And when you met him in New York did you ask him what he was doing?

A. I think he told me he was—

Q. I asked you whether you asked him what he was doing?

A. I don't know.

Q. Did he tell you what he was doing?

A. I was led to believe from the course of his conversation that he might locate here in the liquor business.

Q. Did he tell you he was looking for a location for the liquor business?

A. He didn't tell me point blank; no.

Q. Did he tell you how much money he had to put in this kind of a business?

A. I didn't ask him, sir.

Q. And he didn't say?

A. No, sir.

107 Q. Did he ever leave any money with you at any time when he was in New York?

A. No, sir.

Q. Do you keep track of these prize fights to any extent?

A. Oh, I attend a few.

Q. After this Morris-Flynn — that has been spoken of here were there any other fights where there was a White Hope in it within the next six weeks?

A. I think the Pelzer-Kennedy fight—the National.

Q. And that would be just about what date?

A. Must have been around November some time.

Q. Now, then, is it not the fact—is that the time you saw McNamara?

A. No, sir.

Q. Sure of that?

A. Positive.

Q. Have you made many friends of this kind outside—prior to September the time you spoke of, have you ever heard him spoken of as to his occupation and business?

A. Well, the only thing I ever knew about him or heard about him he was always in the liquor business.

Q. Have you ever heard of his being arrested before this time?

A. Before this time, no, sir.

Redirect examination by Mr. BATTLE:

Q. The fight between Morris and Flynn was at the Madison Square Garden?

A. Yes.

Q. And the fight between Pelsky and Kennedy was at the——

A. National.

Q. Where is that?

A. Amsterdam Hall.

108 Q. 44th Street?

A. Yes.

Recross-examination by Mr. FOX:

Q. Wasn't there a fight between Kennedy and some other so-called White Hope in Brooklyn along about November?

A. Yes, Kennedy fought Carl Morris.

Q. Over there?

A. Yes, that was only a short time ago.

Q. I know when that was. Wasn't that about the 28th of November?

Mr. BATTLE: We will concede this was if you say so.

Mr. FOX: No, I am getting the date fixed.

The WITNESS: That could not have been over two months back—around two months back.

Mr. BATTLE: Those dates are matters of record.

Q. Wasn't there between September 15th and this Kennedy-Morris fight or whatever they call it, in Brooklyn—wasn't there a fight between that—between the Kennedy fight in Brooklyn and this Flynn fight at Madison Square Garden?

A. You see Pelser fought Kennedy twice, so the first time he fought him was at the National, and that was between the Kennedy fight and the Morris fight.

Q. Through the fact that your attention was called to this September fight could you state here with a certainty that it wasn't the second fight—the National Sporting Club fight that was referred to by this man McNamara when you saw McNamara?

A. When I saw McNamara?

109 Q. When you saw McNamara in New York the first time wasn't it just about the time of the fight between Pelser and Kennedy?

A. At the National Sporting Club?

Q. Yes?

A. No, sir.

Redirect examination by Mr. BATTLE:

Q. You talked with him about the Morris and Flynn fight?

A. Flynn-Morris fight.

Q. That was after it occurred?

A. No, before it occurred.

110 PETER CELLA, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination by Mr. BATTLE:

Q. Mr. Cella, where do you reside, sir?

A. Fort Lee, New Jersey.

Q. That is in Bergen County?

A. Bergen County.

Q. You are engaged in the hotel business there?

A. I am.

Q. What is the name of your hotel?

A. Cella Park Hotel.

Q. Where is the hotel?

A. Fort Lee, Dyckman Street, Fort Lee.

Q. How long have you been in the hotel business there?

A. I built that building there 11 years ago.

Q. And you have occupied it as a hotel ever since?

A. Yes, I have occupied it as a hotel ever since.

Q. How long have you been a resident over there at Fort Lee?

A. I have been a steady resident at Fort Lee for 12 years and off and on for 26 years.

Q. You have been a member of the Town Council of Fort Lee?

A. President of the Council Board.

Q. For how long?

A. I was President of the Council Board for four years.

Q. How long ago was that?



A. Four years ago.

Q. Are you now a member of the Board of Freeholders of the County of Bergen?

A. Yes.

Q. How long have you been a member of the Board of Freeholders for the County of Bergen?

A. Finishing up my second term—going on four years.

111 Q. Do you know this gentleman, John McNamara?

A. I do.

Q. When did you first meet him?

A. I met him on the 10th day of September, 1911.

Q. Where was it that you met him?

A. At my place of business.

Q. How is it you recall that day, the 10th?

A. Simply because there was a few people from Bergen County there. We were talking about the new primary election law, and Mr. McNamara joined in the company and was pretty much interested in the conversation.

Q. What was the fact about the primary election law that you were talking about?

A. Simply a new act of legislature—a new law that took effect in Jersey in regard to filing your petition ten days previous to the primaries for the candidates.

Q. When was that?

A. Last summer.

Q. What was the date of the primary election over there?

A. The 26th of September.

Q. And under the primary law you had to file your petition ten days before the 26th?

A. Yes.

Q. That was the conversation?

A. That was the general conversation.

Q. And at the time you had this conversation, was it before the time you filed your petition?

A. Oh, yes.

Q. Some days?

112 A. A few days before. A few days before a man could declare himself a candidate.

Q. That was the first primary election that took place under that law?

A. Yes.

Q. And you were interested in it?

A. I was.

Q. Did you discuss it with McNamara?

A. Why, with Mr. McNamara there in the bar room.

Q. Who else was there at the time?

A. There was a few other people from my town.

Q. Do you remember who they were?

A. Yes.

Q. Who else was there?

A. A fellow named Gus Fisher and a man named Schilling. One or two more, I can't recall.

Q. Who was Fisher?

A. He is a working man goes out tuning pianos. He was there tuning my piano.

Q. Who is Schilling?

A. He is a local business man in the town.

Q. What is his business?

A. He is in the candy and stationery business.

Q. He was in the bar room at the time of this discussion?

A. He was in the bar room at the time of this discussion.

Q. How long did McNamara stay there that day?

A. Not very long; about fifteen or twenty minutes.

Q. When did you see him next after that?

A. I saw him on the 13th of September.

Q. Where was it you saw him then?

A. In my place of business.

113 Q. What was he doing when you saw him?

A. Simply came in and got a cigar and drank a glass of milk or something like that. I don't know whether he had milk or water, and he asked me if I could not get an automobile for him; he wanted to go out for an hour or two.

Q. Did you get the automobile for him?

A. Yes.

Q. Who did you get the automobile from?

A. I didn't know who to get it from at that particular moment, but I got it from Mr. Henry F. Schilling.

Q. The same Mr. Schilling?

A. Yes. I got the automobile and Mr. McNamara came back to my place that same afternoon and he asked me if I knew the price of that automobile and I told him I would find out and I called up Mr. Schilling and he told me it was \$3.

Q. For how long?

A. I don't know. He must have had it out for an hour or so. Mr. McNamara paid me \$3 and the next day I paid Mr. Schilling \$3, and I got a receipt from Mr. Schilling.

Q. Is this the receipt you got from Mr. Schilling?

A. Mr. Schilling gave me the receipt.

Q. That was the day after McNamara took the ride in the automobile?

A. Yes, that was when I paid him. Mr. McNamara paid me on the 13th.

Q. McNamara paid you on the same day he took the ride?

A. Yes.

114 Q. And the following day you handed the money over to Schilling and got the receipt?

A. Yes, I kept it to show McNamara I paid the money any time he asked me.

Q. Was that written by Schilling?

A. Yes, sir.

Q. In your presence?

A. In my presence. I paid him right in his own store. I went down the next morning and got some papers and paid him right in his own store.

Mr. BATTLE: I offer that in evidence.

Mr. Fox: Objected to as entirely incompetent. The handwriting is not proven.

Q. Schilling wrote it in your presence?

A. My presence.

The COMMISSIONER: Let it go in.

Received and marked Defendant's Exhibit 2 in evidence of this date.

The COMMISSIONER: Why didn't you give the receipt back to McNamara?

The WITNESS: Mr. McNamara never asked me about it and I never thought about it.

The COMMISSIONER: Didn't you see McNamara after you got the receipt?

The WITNESS: Oh, yes.

Q. McNamara didn't say anything further to you about the money?

A. Never.

Q. You never had any occasion to show him the receipt?

A. Never had any occasion. I simply put it in this envelope.

115 Mr. Fox: Let's look at the envelope which you have?

The WITNESS: Yes (handing Mr. Fox envelope).

Q. You simply got a receipt from this man in case McNamara might want to see it?

A. That's all.

Q. That was on September 14th? After that when was the next time you saw him?

A. I met Mr. McNamara on the 15th of September.

Q. On the 15th where did you see him?

A. In my place of business.

Q. What was he doing there?

A. He had dinner at my place of business.

Q. Did he sign a check for his dinner?

A. He did.

Q. Is that the check?

A. That is the check.

The COMMISSIONER: What time of day was that?

The WITNESS: About four o'clock in the afternoon.

Q. On the 15th?

A. Yes.

Q. Is that the check for the dinner?

A. That is the check for the dinner.

Q. Whose handwriting is that check in?

A. This check is the waiter's handwriting.

Q. And which part of it is the waiter's handwriting?

A. "Three dinners 1 quart Chianti and 1 pint Chianti and 2 cigars."

Q. That is in the waiter's handwriting?

A. Yes.

Q. In whose handwriting is the bottom part?

116 A. The receipted handwriting is mine. Mine is when he paid me that check. He paid me on the 19th of September. J. McNamara signed that receipt to the waiter, being he hadn't paid for it that day. The waiter turned that into the bar and the bartender put on the date, September 15th, 1911, and Mr. McNamara calls at my place on the 19th and pays me and I receipted the receipt for him.

The COMMISSIONER: Are you in the habit of giving a receipt whenever anybody gets dinner?

The WITNESS: That is when they don't pay for it.

Q. He took dinner on the 15th?

A. He took dinner on the 15th and may be on the 19th.

Q. And he signed the check—

A. He signed the check on the 15th, the day he had dinner.

Q. The date, September 15th, 1911, written in at the top here; whose handwriting is that?

A. That is the bartender.

Q. In whose handwriting are the words "September 15th, 1911"?

A. Bartender's.

Q. What was the name of the bartender?

A. Richard Cella, my brother.

Q. Was he the man who took in the money, received the money at that time?

A. That is the man that takes in the money.

Mr. BATTLE: I offer that in evidence.

The COMMISSIONER: In whose handwriting is that (showing witness)?

The WITNESS: That is McNamara's.

117 The COMMISSIONER: Did you see McNamara sign that?

The WITNESS: McNamara signed that in front of the waiter.

The COMMISSIONER: Did you see him sign it?

The WITNESS: No, I didn't see him sign it.

Mr. ROSE: You were not there, were you?

The WITNESS: I was in the place of business.

The COMMISSIONER: Better mark it for identification.

Q. You signed here the words—

A. I signed "Received payment September 19th, 1911, Peter Cella."

Q. You signed it yourself?

A. I signed it myself on the 19th. That was the date Mr. McNamara paid it.

Q. Was McNamara present when you signed it on the 19th?

A. He was.

Mr. BATTLE: I offer it now to show he was there on the 19th.

Q. You saw McNamara there?

A. I did see McNamara there. I didn't see him sign it.

Mr. BATTLE: I offer it in evidence upon the ground that the lower part of the exhibit "Received payment, September 19th, Peter Cella" was according to the testimony of this witness written in the presence of Mr. McNamara.

The COMMISSIONER: This bar-keeper is in your employ isn't he?

The WITNESS: Yes, he is in business with me. He is my brother?

118 The COMMISSIONER: Mark it for identification.

Mr. BATTLE: I say this lower entry "Received payment" was signed by this witness in the presence of McNamara, and that is competent to prove McNamara was there on the 19th.

Q. After you signed this what happened?

A. I turned it over to Mr. McNamara after Mr. McNamara gave me a \$5. bill.

The COMMISSIONER: Where did you get that from now.

The WITNESS: I always keep those things and file them the same as the receipt.

The COMMISSIONER: Mark that for identification; put in what he signed in evidence.

Mr. Fox: That part of the paper which says "Received payment September 19th, 1911, Peter Cella" is offered in evidence?

Mr. BATTLE: Yes.

Mr. Fox: Objected to on the ground that it establishes nothing. It is unintelligible.

Portion of paper marked Defendant's Exhibit 3 for identification and portion of paper marked Defendant's Exhibit 4 in evidence, of this date, according to the ruling of the Commissioner.

Q. After the 15th of September when did you next see McNamara?

A. On the 19th.

Q. That was the time he paid you the money—paid this check?

A. Yes.

119 Q. Check for \$4.75?

A. Yes.

Q. How much did he pay you?

A. He gave me a \$5. bill and received 25 cents change.

Q. And you filed this receipt?

A. Yes. He shoved it over to the bar and I put it in the same envelope.

Q. You signed it and handed it to him and he shoved it back across the bar?

A. Yes.

Q. After the 19th when did you see him?

A. I saw him all the way up to the latter part of December; I think I saw him after Christmas.

Q. You saw him every few days?

A. Every couple of days either going on the car or coming out the car.

Q. Did he take meals at your place pretty frequently?

A. Yes, occasionally he would stop in and have meals.

Q. You are sure that this man here is Mr. McNamara?

A. Yes.

Q. Who first spoke to you about McNamara being arrested?

A. I didn't know he was arrested until about two weeks after he was arrested.

Q. Who first spoke to you about his being arrested?

A. In general conversation at home we were just talking about McNamara and somebody says do you know that that big tall fellow was arrested? I said I don't know.

Q. Who first spoke to you about coming over here to testify?

A. A stout fellow came over around the 20th of February 120 and asked me if I knew McNamara and he told me he heard that McNamara came to my place frequently and I told him he did, and when he got to telling me about it I said "Why Hell, I got stuff here to prove that this man was in here around the first and close up to the first of the year. This man that came up to see me was Judge Oakes or something like that—a big, stout German.

A. No.

Q. When did Oakes first speak to you about the case?

A. On or about the 20th of February.

Q. You afterwards made an affidavit?

A. He asked me if I would make an affidavit and I said I certainly would, and we made an appointment and I came down and met Mr. Oakes down at the café "Madrid" and I told him what I knew and he got that typewritten and I signed it and made that affidavit.

Q. You have no interest in the case?

A. Not a bit.

Q. When was the last time you saw McNamara before he was arrested?

A. Why, I should say it was between that week—between Christmas and New Years. I can't recall the date.

Cross-examination by Mr. Fox:

Q. Where does McNamara live in Fort Lee?

A. I could not say.

Q. Who did he live with?

A. I don't know.

Q. But he came into your place?

A. Yes.

Q. Who did he come in your place with that you knew?

A. I don't know anybody in particular that he came in 121 with. He always came in there alone.

Q. Don't you know he came in there with a man named Ryan?

A. Yes, he did.

Q. And he came in pretty near always with Ryan?

A. Not always, no.

Q. Ryan lives in Fort Lee?

A. He did at the time.

Q. He does now, doesn't he?

A. No, sir.

Q. How long did Ryan live at Fort Lee?

A. About a year and a half about, or two.

Q. Don't you know that McNamara lived with Ryan?

A. I don't know that he lived there, no, sir.

Q. Do you mean to tell me that there in Fort Lee that man came into your place from September until after Christmas and that you didn't know he lived in Fort Lee?

A. I didn't know he lived with Ryan, no.

Q. Did you know he lived in Fort Lee?

A. No, sir.

Q. And never during that period did you ask where he lived?

A. No.

Q. How often did you see Ryan with him?

A. I have only seen Ryan probably three or four times with him in all that time.

Q. Didn't he come in with Ryan the first time?

A. No, sir, I could not say he came in the first time because I knew Mr. McNamara before Mr. Ryan came. In the different hotels I had met McNamara.

122 Q. Had you ever met Ryan before you met McNamara?

A. I met Ryan before I met McNamara.

Q. How long before you met McNamara did you first meet Ryan?

A. About a year and a half.

Q. Ryan frequently came into your place?

A. Occasionally, yes.

Q. I said frequently?

A. Occasionally he came in.

Q. Does he come in once in a while?

A. No, sometimes he stayed away as long as a month.

Q. After he stayed away a month he came back and came in every day?

A. No, sir.

Q. Ryan didn't introduce McNamara to you?

A. No.

Q. McNamara, for the first time that you can recollect, was there on September 10th?

A. September 10th.

Q. Who introduced you to McNamara?

A. Nobody particularly introduced me to him.

Q. Were you introduced at all to him?

A. Simply after about a week or so after that I was introduced to him by Mr. Ryan as Mr. McNamara.

Q. Then Ryan was the first man that introduced him?

A. I knew that Ryan was practically the first man that introduced me to him.

Q. Don't say practically, Ryan was the first man that introduced him to you, wasn't he?

A. I could not say.

Q. On September 10th you didn't know McNamara's name?

A. I did not.

123 Q. And it wasn't until the week after that you knew who he was?

A. No, I knew three days after that; on the 13th I knew who he was. He introduced himself.

Q. He introduced himself?

A. That is when he asked me for the automobile.

Q. Now, let us have this conversation about the automobile. He came into your place on that day and did he ask immediately for the automobile?

A. Why, simply I was busy with some other people in the bar room.

Q. Did he have a drink or cigar there?

A. I had a cigar with Mr. McNamara.

Q. After that time the automobile came up?

A. Yes.

Q. You had a cigar with Mr. McNamara before the automobile came?

A. Yes.

Q. How long was he in there at that time in your place before he went out with the automobile?

A. Just about ten minutes before I got the automobile——

Q. And you got it from whom?

A. Schilling.

Q. And Mr. Schilling is a news dealer?

A. Yes, he takes people out occasionally.

124 Q. Who was with McNamara when he went out?

A. All alone.

Q. He drove it himself?

A. No, sir, Mr. Schilling drove the car.

Q. Let me have that receipt that you have there?

Mr. BATTLE: Which one do you mean?

Mr. FOX: The so-called automobile receipt.

Q. Had you ever hired for anybody else an automobile from Schilling?

A. Yes.

Q. I don't mean for yourself but for anybody else?

A. For somebody else?

Q. Some customer of yours?

A. Yes, sir.

Q. Where is the receipt that you got for that money you paid to Schilling?

A. I didn't require any receipt.

Q. Did you ever on any occasion previous to this ever pay Schilling any money for anybody else on account?

A. No.

Q. Did McNamara have any conversation with Schilling about the automobile at all?



A. I don't know anything about it.

Q. All I understand then, that you did for McNamara, so far as this automobile was concerned, was to find out from Schilling whether he could take McNamara out in the automobile?

A. No, Mr. McNamara wanted an automobile for an hour or so and I didn't know just who I could get one from at that time, and I called up Mr. Schilling because I knew he had a good car and is only too glad to lend it out.

Q. At that time had McNamara agreed with you upon any price?

A. No.

125 Q. Had you with Schilling?

A. No.

Q. When was it first ascertained what the price was to be by you?

A. Mr. McNamara came back to my place and Mr. Schilling went home. Mr. McNamara asked me how much I thought that automobile would cost and I told him I didn't know, and I telephoned to Mr. Schilling and said how much does that cost and he says \$3., and Mr. McNamara gave me \$3 to pay to Mr. Schilling, and to show Mr. McNamara I paid him I got a receipt from Schilling.

Q. Where is Schilling's place, how far a distant from your place?

A. About 900 feet or a thousand feet away.

Q. Did McNamara come back to your place?

A. McNamara came back to my place.

Q. And Schilling was in the automobile?

A. Schilling was in the automobile.

Q. Schilling didn't get out of the automobile?

A. No.

Q. He didn't come into your place?

A. No.

Q. And at that time McNamara handed you the \$3 when you ascertained what the amount was?

A. After I found out what it was.

Q. Now where has this receipt been all the time?

A. In the same envelope where I had this other receipt here. I put that receipt in Mr. Schilling's envelope.

Q. Which one of those did you put in first?

A. That one of course (indicating Exhibit 2).

126 Q. Had you ever shown this to McNamara?

A. No, sir.

Q. The 10th day of September is the first date you fix, as I understand it, owing to this discussion about a new primary law?

A. I haven't fixed that day. That was the day I met him.

Q. That is the day you first met him?

A. The first day I met him.

Q. How do you come to fix that day as September 10th, 1911?

A. I remember it very well because it was three days before he came and got that automobile from me. That is how I fix it.

Q. And it is only from the facts that he got the automobile on the 13th and was there three days before that you fix it as the 10th?

A. Yes.

Q. So that this primary law didn't enter into fixing the date at all?

A. Oh, no, no, no.

Q. Was he there on the 11th?

A. I wasn't at home at all.

Q. On the 12th?

A. No, I didn't see him on the 12th.

Q. Was he there on the 16th?

A. No, he was there on the 15th.

Q. Sure it was on the 15th?

A. I am sure it was on the 15th he had dinner there.

Q. And you are sure?

A. Yes.

Q. At four?

A. It is set down at four.

Q. How long had he been in there before four o'clock?

A. A few minutes.

127 Q. At four o'clock he sat down to his dinner?

A. Yes.

Q. How long was he in your place after four o'clock on that day?

A. I presume they left a little after five—about half past five, going to New York.

Q. How many people were with him?

A. Three. The receipt calls for three dinners.

Q. Men or women?

A. I don't want to say.

Q. Was Ryan with him?

A. I don't care to bring anybody else into this. I will bring them in when the proper time comes.

Mr. Fox: I ask if the witness knows that he be directed to answer.

The WITNESS: There was one man and a lady there—Mr. McNamara and a man and a lady.

The COMMISSIONER: That is two men and one lady?

The WITNESS: Yes.

Q. What is the name of the man?

A. I don't know.

Q. Ever see him before?

A. Yes.

Q. How often?

A. Oh, I haven't seen him since that time—probably once or twice before that.

Q. You knew his name before that day?

A. No, I didn't know his name. It is not my business to find out people's names when they come in there to dine.

Q. How did you find out McNamara's?

A. Simply through the introduction and asking me for the automobile, etc.

Q. You say that at that dinner on the 15th there was a  
128 man and lady with him and you don't know the name of that man?

A. No.

Q. Sure of that?

A. Sure.

Q. You had never seen him before?

A. I did.

Q. How many times?

A. Probably two or three times in all my days.

Q. Not any more than that?

A. No.

Q. Did he live in Fort Lee?

A. No.

Q. Did McNamara tell you who he was?

A. No, I didn't ask him.

Mr. Fox: Strike that out. You answer my question.

Q. You have heard that man's name, haven't you?

A. What man?

Q. The man that was with him?

A. No, I did not.

Q. At no time?

A. No.

Q. You never heard the man's name?

A. No.

Q. And don't know who he is?

A. I know him if I saw him.

Q. Do you know who he is?

A. I don't.

Q. Why were you so very cautious about referring to this man that you would not tell this man's name?

A. Because I could not use the man's name anyway.

Q. Then you say you don't know who he is?

A. No.

Q. You don't know who he was?

A. I know him if I saw him.

Q. And you don't know who he was now?

A. If I saw him I would.

129 Q. You don't know his name or who he was?

A. No, I don't know his name. I could not say I know his exact name.

Q. What name, if any, did you know?

Mr. BATTLE: I object to that.

The WITNESS: I don't know his name.

Q. Did you ever hear any name in connection with that man?

Mr. BATTLE: Objected to as incompetent.

The COMMISSIONER: He says no.

Q. Were you introduced to him?

A. I was not.

Q. And you never heard the man's name?

A. I did not.

Q. Well, now, I will ask you again why then was it that you

were so cautious about giving the man's name and said you would not give his name unless you were compelled to?

Mr. BATTLE: Objected to.

The COMMISSIONER: Sustained.

Q. Is he here in the court room, that man?

A. No, sir.

Q. It wasn't Oakes, *who* was it?

A. No, sir.

Q. Oakes came to you as I understand? Did Oakes mention in his conversation with you the month of September?

A. No.

Q. What did Oakes say to you when he opened this conversation?

A. Simply came up there and asked me if I knew Mr. McNamara.

Q. And he didn't mention the month of September at all?

A. No.

Q. Did *you* take down your statement or did you write it?  
130 A. I simply dictated it to him and it was written out before a notary public.

Q. In his office?

A. No, sir.

Q. Where?

A. At the Waldorf-Astoria.

Q. Were there any other persons there present except Oakes and yourself?

A. No, sir.

Q. Have you ever paid money for other people similar to McNamara—that is you paid for McNamara on that occasion?

A. On many occasions.

Q. To Schilling?

A. Not to Schilling alone.

Q. Anybody else?

A. Yes.

Q. Have you got in your possession any receipts for payments made to anybody else, for the account of anybody else?

A. No.

Q. This dinner check you produce here. Why didn't you give that to McNamara?

A. I did, but he threw it over the bar. I put it in that envelope. He simply paid for it and I receipted it.

Q. What did you do with it then?

A. Put it in this envelope.

Q. Now, where did you put that envelope?

A. In my desk where I keep all other things.

Q. Why did you keep this particular receipt and paper?

A. I don't know. The same as I would keep other things some times.

131 Q. Hadn't both of those papers been given to you within the last month?

A. No, sir.

Redirect examination by Mr. BATTLE:

Q. This card I show you here is this the card of the public stenographer?

A. That is a public stenographer at the Hotel Astor. I made a mistake.

Q. Was it at the Hotel Astor that this affidavit was prepared?

A. Yes, sir.

Q. And you signed the affidavit?

A. Yes, sir.

Q. Did you get the card at that time from the stenographer?

A. I asked him for his card.

Q. At the time?

A. At the time.

Mr. BATTLE: I ask that it be marked.

Marked Defendant's Exhibit 3 of this date in evidence.

Mr. BATTLE: I also offer in evidence the envelope in which the witness states he placed the two exhibits and kept them in his desk.

Marked Defendant's Exhibit 4 of this date in evidence.

Q. This dinner check. Was that placed on a file?

A. It was.

Q. You say you have kept this dinner check on file?

A. I kept that on file from the 15th to the 19th. You see a hole punched in there.

132 Q. What kind of a file is it?

A. Just an ordinary file.

Q. Is this hole I show you the place made by the wire hook?

A. Yes.

Recross-examination by Mr. Fox:

Q. When he paid you that money for the check did you hand the check over to him?

A. I did.

Q. What did he do with it?

A. Simply threw it over to me. He gave me \$5. and got 25 cents change.

Q. At that time he threw that check back to you you didn't have Schilling's receipt there at the same time?

A. I did, but he was in a hurry to get away.

Q. Did he pay Schilling's and this dinner check at the same time?

A. No, he gave me the money to pay Mr. Schilling on the 13th day of September and I paid Mr. Schilling on the 14th day.

Q. And you got a receipt from Schilling?

A. Yes, I got a receipt from Schilling.

Q. Now, that receipt when you got it from Schilling where did you put it?

A. Right in this envelope.

Q. And you put that envelope in your desk?

A. I did.

Q. Now, he came in, according to your statement, on the 19th of September and paid you your dinner check?

A. Paid me a dinner check.

Q. And he didn't take the check away?

A. No.

Q. He threw that back to you?

A. Yes, I just put that in an envelope and said I will give  
133 it to him some day *when* the automobile receipt.

Q. He hadn't asked you to keep this receipt?

A. No.

Q. And at the time he paid the dinner check you didn't have the automobile receipt in front of you?

A. No.

Q. The automobile receipt was in your desk?

A. Yes.

Q. And then you took this receipt that the man had thrown away—he didn't throw it away.

Q. He didn't say whether he wanted it or not?

A. No.

Q. And you took that receipt and put it with the other one?

A. Put it in the envelope.

Q. And you have had that envelope with these two receipts ever since?

A. Yes.

Q. Without having been asked for them?

A. Never have been asked.

Q. You have got other receipts from other people who paid money of that kind?

A. I have.

Q. You haven't any receipts for any money ever paid Schilling for anybody else?

A. I never had occasion to pay Mr. Schilling for anybody else.

Q. Now, that receipt is in Mr. Schilling's handwriting, isn't it?

A. Yes.

Q. And he wrote off the whole of it not at your dictation in any way?

A. No, simply told him give me a receipt for Mr. McNamara.

134 Q. You told him McNamara? He didn't know McNamara?

A. I don't know as he knew him or not. I told him I wanted an automobile for a friend of mine, Mr. McNamara.

Q. And up to this time you had not met McNamara, how many times?

A. Met him on the 10th and the 13th; I met him twice on the 13th.

Q. He then had been in before he got the automobile?

A. He came in yes, sir, of course, and came in after he got back from the automobile ride.

Q. Then he had never been in but once before he came in from the automobile?

A. On the 10th.

Q. And yet you told Schilling that you wanted an automobile for your friend McNamara?

A. I simply said "My friend McNamara."

Q. So that really you had met him but once before?

A. That is the only way I could put it.

Q. Now, outside of Oakes nobody has spoken to you about this case?

A. No, sir.

Q. Ryan hasn't said anything to you?

A. I haven't seen Ryan. He moved about the first of the year and I don't know where he has gone to.

Q. Conroy; you never met him?

A. I met him today where he made the appointment—not Conroy but Mr. Oakes telephoned me to come down and I told him I would and he said meet me at Shanley's and I met him and I met Mr. Conroy today.

135 Q. How many of you were at Shanley's this afternoon?

A. Only me, Conroy and this gentleman—met him there and had a social drink and came down about my business.

Adjourned to Wednesday, March 20, 1912 at 2 o'clock P. M.

136 UNITED STATES OF AMERICA,

*Southern District of New York:*

In the Matter of the Application for the Extradition of JOHN McNAMARA, Under the Treaties Between the United States and Great Britain, on the Charge of Burglarizing the Garage of Thomas J. Trapp.

Before John A. Shields, Esq., U. S. Commissioner.

NEW YORK, *March 20, 1912.*

Appearances:

The Commissioner.

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

Abram J. Rose, Esq., for the Bank of Montreal.

FRANK J. DRUMMOND, called as a witness on behalf of the Accused, being duly sworn, testifies as follows:

Direct examination by Mr. BATTLE:

Mr. BATTLE:

137 Q. Will you please note that I take from the defendant himself his hat, the hat of the defendant, and show it to the witness.

Mr. Fox: We didn't see it taken from the defendant.

Mr. BATTLE: I just took it from him a minute ago.

Mr. Fox: Will you put him on the stand?

Mr. BATTLE: I will take the stand myself and swear to it.

Mr. Fox: Well, if you say so.

Q. What is your business?

The COMMISSIONER: Your residence?

A. 102 West 75th Street.

The COMMISSIONER: What is your occupation?

The WITNESS: Retail hat business.

Q. What is the name of your firm?

A. McCue Bros. & Drummond, 1412 Broadway and 52 and 54 New Street.

Q. How long has that firm been in business?

A. Since 1869.

Q. How long have you been with them?

A. Since 1876.

Q. And you are familiar with the hat business and have been in it all your life, have you not?

A. Yes, practically.

Q. This hat which I show you now and which I have just taken from the defendant, will you examine it and state when that was sold by you?

A. It was sold from my establishment, yes, sir.

Q. It was sold from your store?

A. Yes, sir, from the Broadway store, that I know.

Q. What make of hat is it?

A. Who made it?

Q. Yes.

A. For the firm?

Q. Yes.

A. Henry H. Rolla.

138 Q. When was that hat put on sale in your store?

A. To the best of my recollection the latter part of August.

Q. Of last year?

A. Of last year, yes, sir.

Q. When you say the latter part, just be as definite as you can?

A. I can't remember positively as to when exactly, but this is one of some hats we had in the basement.

Q. You say the last week in August?

A. I should imagine the last week in August.

Q. How long were those hats sold at your Broadway store last fall?

A. You mean how long did they remain on sale?

Q. Yes, how long did they remain on sale?

A. Well, these hats were taken from the cellar and put on sale, as the hats that we were putting out for the fall business were an entirely different shape, and I told the boys to sell these right out, so there wasn't very many of them, but I imagine they were sold out very quickly.

Mr. Fox: I move to strike that out.



Mr. BATTLE: Strike out what you imagine.

Q. What is your recollection as to when all of these hats were sold out?

Mr. ROSE: I object. That is not proof. He has no recollection about it.

The COMMISSIONER: That's right. I think Mr. Rose is right.

Q. I am asking you what is your recollection as to when  
139 the hats were sold out?

Mr. BATTLE: If he hasn't any recollection he can say so.

The COMMISSIONER: Just tell us about that.

The WITNESS: I haven't any recollection as to when they were sold out.

Q. You know how long these hats were kept on sale in your store?

A. It wasn't what we would call a sale. It was hats that were put on sale. We don't have what we call sales.

Q. I don't mean a special sale, but how long did these hats continue on sale in your store?

Mr. ROSE: He has no recollection how long it lasted; he says he hasn't.

The COMMISSIONER: Do you know how long that sale lasted?

The WITNESS: No, I don't know how long they were on sale.

The COMMISSIONER: You gave directions to have them put on sale?

The WITNESS: Yes.

The COMMISSIONER: When they were put up, or whether they were put up or not you don't know?

Mr. BATTLE: You know what goes on in your store?

The WITNESS: I know that they were put up, yes.

Q. Don't you know how long these hats continued on sale in your Broadway store?

A. I can explain. To be candid in the matter the shapes were a little obsolete, and I told the boys to get these hats ap  
140 from the cellar and sell them.

Q. You do identify that hat?

A. Yes.

Q. The point is this, what I am asking you is to give me your recollection as to how long these hats, hats like this one I have just shown you, were kept on sale at your Broadway store?

A. Well, there were only a few dozen of them. The rest were sold pretty rapidly. Whether they were all sold out or not that I could not swear.

Q. What is your best recollection?

Mr. FOX: He says he has none.

The WITNESS: They were taken from the shelves and the regular stock put in about the 15th of the month.

Q. About the 15th of what month?

A. About the 15th of September. Last year it was a little earlier

on account of the season opening up a little earlier than the 15th. We usually open our season about the 15th of the month.

Q. You say that last year these hats were taken from the shelves and the regular hats put on——

A. About the 15th.

Q. So that none of these hats were sold after that time?

A. Not to my recollection, sir.

Q. So that these hats were on sale in your store——

The COMMISSIONER: He says he does not know.

The WITNESS: I recollect that these hats were put on sale.

Q. But whether they were sold or not you don't know, do you?

A. I know that several of them was sold I know that.

Q. Don't you know when they were taken off and regular hats put on sale in their place?

A. Yes, regular hats were put on there possibly the 13th or the 14th or the 15th of the month.

Q. Of what month?

A. September.

Q. 1911?

A. 1911, yes?

Q. So that these hats were sold between the last of August and about the 13th or 14th or 15th of September?

A. Yes.

Mr. Fox: I object, as to this particular sale he doesn't know anything about it.

The COMMISSIONER: This gentleman doesn't know whether they were sold singly.

The WITNESS: Yes, one at a time. We only retail.

Q. This style of hat I have just been questioning you about—the hat I show you now, is one of them, is it not?

A. Yes, sir.

Q. I want you to state just what your recollection is, Mr. Drummond, give me your personal recollection——

Mr. Fox: I object.

The COMMISSIONER: If he has any recollection about it let's have it.

Mr. Ross: He says he hasn't any recollection about it. He has said that twice.

The COMMISSIONER: If he has any recollection about it.

142 The WITNESS: About which? I have a recollection that these hats were ordered.

The COMMISSIONER: You have a recollection about certain hats being taken upstairs and that those hats were sold for \$2, instead of \$6.

A. They were sold for \$3.50.

The COMMISSIONER: On account of the style?

The WITNESS: Yes.

The COMMISSIONER: That is all you know about it?

The WITNESS: Yes. I do know that the hats were sold between the specified times that I state.

The COMMISSIONER: Do you keep a record of when hats are sold?

The WITNESS: Yes.

The COMMISSIONER: Then you would know from your records when these particular hats were sold?

The WITNESS: Yes. I have records of sales made of these hats.

Q. Are you in your store every day?

A. Yes.

Q. And you saw personally these hats being sold?

A. Yes.

Q. What is your recollection as to when you personally saw these hats put on sale in your store?

A. My recollection is that I saw these hats put on sale in my store between the time I state, as well as I can remember.

Q. That they were put on sale about the last of August.

143 A. You say?

A. The latter part of August.

Q. When they were taken off the shelves and regular hats substituted?

A. As I say, yes, anywhere between the 13th and the 15th of the month.

Q. And that is of your personal knowledge?

A. Yes.

Q. You are there every day?

A. Yes.

Q. You saw the hats?

A. Yes.

Q. You saw the hats put there?

A. Yes.

Q. And you saw that they were taken away?

A. Yes, sir.

Cross examination by Mr. Fox:

Q. Had that style of hat been sold in your store at any time prior to August of last year?

A. Yes, sir.

Q. When?

A. It might have been sold in the spring, or it might have been sold the year before, but they were sold then, as I stated, at \$6 apiece.

Q. Had any one hat of that style been sold in your store prior to August, 1911?

A. Yes, sir.

Redirect examination by Mr. BATTLE:

Q. This very hat? What was that particular hat sold for?

A. \$3.50. There is a distinguishing mark in it. This is the mark that sells at \$6 (showing).

Q. Were these hats ever sold at \$3.50 except last fall?

A. No, this sticker was taken out and put in.

144 Q. This sticker that is put in the bottom there?

A. That is the only way I can tell that.

Q. That indicates it is a \$3 hat?

A. \$3.50, sir.

Q. So that you are able to swear positively, Mr. Drimmond, that this hat I show you, with the sticker in it, was one of the hats that was sold last fall?

A. Yes.

Recross-examination by Mr. Fox:

Q. Was any hat of that style with a sticker in it sold after the 15th of September?

A. That I could not say anything about. That would only be imagination, sir.

Q. You don't remember the style of that particular hat—to whom it was sold?

A. There was several of them, sir.

Q. I ask you if you remember the style of that particular hat, to whom it was sold?

A. No, I could not identify him.

Q. What is the size of that hat?

A. Well, I would have to look at it to find out, sir.

Q. Will you look at it?

A. Yes. The size mark is right in it.

Redirect examination by Mr. BATTLE:

Q. You say these hats were taken down to the cellar about the 13th, 14th or 15th of September?

A. Yes.

Q. Were they ever put on sale after that?

A. Yes, they were, if there were any left.

Q. At what time?

145 A. That I could not positively say. I would have to go into the intricacies of the business to explain the thing perfectly.

Q. That is what I want, explain it?

A. Well, we will begin by saying the style was obsolete. The hats were on my hands. The hats were made to be sold at \$6——

Mr. Fox: He has said that twice.

The WITNESS: Well, the gentleman asked me to explain, sir. And the hats, not moving very rapidly, I said to the boys, "Take these hats and place them on the shelves and take your \$6 sticker out and put in a \$3.50 sticker and sell them at \$3.50 apiece. When your regular goods are on sale, take them off the shelf."

Q. And that was done?

A. Yes.

Q. They were taken down to the cellar?

A. Yes, sir. Of course I could not keep any record of anything further, Counselor.

MR. BATTLE: There is another witness I expect will be here to-day, but I find he is a business man and is alone and he cannot get away. He can come at any other time. It will only take a few minutes. I would like to bring him over to-morrow if we can.

146 PETER CELLA, recalled for further cross examination:

By Mr. Fox:

Q. Mr. Cella, you know the house that Mr. Ryan lived in in Fort Lee?

A. Yes, sir.

Q. Was that house almost directly opposite your hotel?

A. Well, opposite—pretty near opposite, yes.

Q. So that it was within the view of your hotel so that you could see persons coming in and out if you were looking at them?

A. Yes.

Q. What houses were in the vicinity of Ryan's house?

A. What house?

Q. One house, how close was that?

A. There is a brick house right along side of Ryan's house.

Q. Who is that occupied by?

A. There is two families in there.

Q. What was their names, do you know?

A. Rice and Hooper.

Q. On the other side of Ryan's house, placing Ryan's house in the center?

A. The landlord.

Q. What is his name?

A. His name is Cairalo.

Q. In the rear of Ryan's house who was there?

A. Nothing that I know of.

Q. Now, do you remember the automobile that you have testified to the defendant riding out in on the 13th of September?

A. Do I remember the automobile?

147 Q. Yes.

A. I don't know as I can remember the automobile, but I remember the time.

Q. I am asking about the automobile and that only. Can you describe that automobile?

A. Not very well, because the man had two. I don't know just which one.

Q. Well, now, as near as you can, will you describe that automobile.

A. Well, I know the automobile was a three-passenger car, and the chauffeur carried four people.

Q. Do you remember what kind of a body it had on it?

THE COMMISSIONER: As to color you mean?

MR. FOX: No, I mean the shape of the body, first.

A. No, I could not tell that, because I haven't paid much attention to it.

The COMMISSIONER: You saw it more than once, didn't you, this automobile.

The WITNESS: Yes, I saw it several times.

Q. Did it have a top?

A. I saw that machine when it had no top, and I saw it when it had a top.

Q. Do you recall whether on this day in September it had a top or not?

A. Yes, it had a hood.

Q. Wind shield?

A. I don't recollect.

Q. Now, then, this particular machine that was used on that day, did you ever see that used by Schilling for business purposes—trucking or carrying things away?

A. Never saw it, no.

148 Q. The other machine; will you describe that to us as near as you can? You say he had two?

A. Well, the other machine was a little smaller car, I think it was, and if I am not mistaken, it is out of use, or has been out of use, but I am not quite sure. I have rode in that machine myself—the smaller one.

Q. Did that have a body on for carrying freight?

A. I don't know.

Q. You rode in that car?

A. I rode in that car four years ago.

Q. And not since?

A. Not in that one, no.

Q. Well, that particular one. Had any change been made in it to your knowledge?

A. I don't know.

Q. Do you remember at any time this larger car having upon it a frame for carrying passengers, or anything like that?

A. I don't know.

Q. That it didn't have any seats on it at all?

A. I don't know anything about that.

Q. Do you know the make of this car?

A. I don't.

Q. Do you know whether it was an Oldsmobile?

A. I don't know.

Mr. BATTLE: Which car are you referring to, the large or the small?

Mr. Fox: I am referring to the car he saw on September 13th.

A. I don't know the make of that car.

149 Q. Do you remember at any time one of these automobiles of Schilling's being in a repair shop?

A. I don't.

Q. Have you been able to find any other receipts that that Schil-

ling gave to you for any money you had paid to him for the use of his automobile?

A. Why, I haven't looked for any, but I know at one time he sent me a bill, and the bill was paid by the concern that he sent me the bill to, and I forgot who the concern is.

Q. Was it the Republic Film Company?

A. I think it was the Republic Film Company—moving picture people, I know.

Q. You didn't keep that receipt?

A. No, sir, he didn't send me a receipt; he simply sent me a bill; that is all. It is not a receipt.

Q. Do you remember what month that was in?

A. I don't recall.

Q. It was last year, wasn't it?

A. It was last year, yes, but I don't recall just what time of the year it was; I could not say.

Q. Can you recall whether it was before or after this McNamara trip?

A. I presume it was after.

Q. About how long after, would you say?

A. This was a long time afterwards, because I remember that the Republic moving picture people wanted to hire an automobile and they could not get any in town, and they asked me, and I  
150 phoned to Mr. Schilling and Mr. Schilling has taken them around town, but this was long ways afterwards. I presume it was probably in November—sometime in November; I could not say exactly.

Q. At the time McNamara went out in this car, as you have testified to, in September, there was a touring body on this automobile, was there?

A. Why, it had a hood on. It was an automobile.

Q. And this machine that went out on this occasion, as you have testified to, would seat four people, or three, including the driver?

A. You could put three in the back if you wanted to. Comfortably, I said two.

Q. The other machine that Schilling had would only seat how many?

A. The other machine would seat the same amount, because I recall that Mr. Schilling and Mr. Cella and myself and Mrs. Schilling rode in that machine.

Q. How many seats did that other machine have?

A. Which other one?

Q. The smaller machine?

A. Just the same number of seats.

Q. And the make of that car you don't know?

A. I don't know the make of it. I did know the make of it, but I have forgotten, it is four or five years ago that I was out in it.

Q. What I am asking you about now is the last time. Did Schilling have two cars last year in September?

A. He had two cars, yes.

151 Q. Did he have two in September?

A. He did.

Q. Did he have smaller cars—that is the smaller car he had last year, did he have that at the time you spoke of riding out?

A. He did.

Q. That was the one McNamara rented?

A. I am not quite sure which one it was. Between the two machines I do not think there is half a foot difference in the length, as far as I know the machines.

Q. Would this few feet—

The COMMISSIONER: You mean to say that one would hold as many as the other; they both held alike?

A. There is one I presume—I have never rode in one of them, but from the looks of it I presume it has more room in it, just a little more seating room—a little more foot room than the first one I have reference to.

Q. You saw it come there that day, as I understood you?

A. I saw it come there, yes.

Q. And you saw it return to your place?

A. It didn't return to my place.

Q. It did not return that day to your place?

A. It didn't return that day to my place.

Q. Did McNamara come in there that day again?

A. McNamara didn't come in there that day again. He came up on the car.

Mr. BATTLE: The street car, you mean?

152 The WITNESS: Came up on the street car. That is why this man who drove the machine was not paid for the machine, being Mr. McNamara sent Mr. Schilling home and—

Q. You were not there, were you? How do you know he sent him home?

A. I know it this way, because Mr. McNamara came to my place and says, "Let me find out what that automobile cost."

Q. You don't know whether McNamara sent the man home?

A. That I don't know.

Q. Why are you testifying about it?

A. I simply say that is the way they carried it out.

By Mr. ROSE:

Q. Do I understand you, Mr. Cella, that the machine you say that went away was not the machine you had ridden in which you call the little machine?

A. The machine they went away—I know I have ridden in one machine, but I am not sure which one it was.

Q. You won't say the machine they went away with was the one you have been riding in?

A. I am not sure which one he went away in.

By Mr. FOX:

Q. You know Ryan? Will you look at that picture and tell me whether that is the Ryan that let—

A. Yes, that is Mr. Ryan.

Marked Government Exhibit 1 of this date for identification.



153 Q. McNamara, as I understood you the other day, you had never seen before September 10th?

A. September 10th, first day.

Q. And you don't know where he lives?

A. I don't know where he lives, no sir.

Q. And you don't know now where he lived?

A. Do I know where he lives now? I don't know.

Q. No; do you know where he lived if he lived at all, in Fort Lee?

A. Would I know where he lived?

Q. I asked you if you know where he lived in Fort Lee?

A. No, I did not.

Q. Did you ever see him at Ryan's house?

A. I never saw him in the house, but I saw him go in and out and on the porch, and sit on the porch.

Q. You never saw him go in the house?

A. I saw him go in the house and sitting on the porch.

Q. You never saw him coming away from there?

A. I saw him coming away from there, yes.

Q. The same day he went in?

A. I didn't pay any attention to that.

Mr. BATTLE: He said he saw him coming in and going out.

Q. How many times did you see him coming in and going out of Ryan's house?

A. Why in all the times he has been there I presume I saw him a dozen times going in and out, that is in the house, and I saw Mr.

McNamara probably fifty or sixty times, but not going in  
154 the house.

Q. Did you see him fifty or sixty times at Ryan's place?

A. No, sir, I have said about ten or a dozen times.

Q. When did you see Ryan last?

A. I don't remember when I saw him.

Q. This week?

A. No, sir, I saw him one day when he went up there moving out of the house.

Q. Have you seen him this year, that is 1912?

A. Yes, sir.

Q. When, first?

A. I don't know just when.

Q. The month of January?

A. Yes, I saw him in the month of January.

Q. The month of February?

A. I don't know that; I would not say.

Q. Where did you see him when you saw him in January?

A. I saw him at Fort Lee.

Q. And since you saw him that day in Fort Lee you haven't seen him?

A. I saw him since.

Q. Where did you meet him that time?

A. I met him here in New York.

Q. Whereabouts?

A. Corner of 42nd Street and Broadway.

Q. By appointment?

A. No, sir.

Q. And you are unable to say when it was?

A. I could not say right what day that was.

Mr. BATTLE: It was since January.

Q. Was it before Washington's birthday?

A. Yes, it was long before that.

155 Q. And since that time you haven't seen him?

A. Not to my recollection, I don't think I did.

Q. Have you any recollection on the subject?

A. What subject?

Q. Of seeing him?

A. No. It didn't make any impression on me to know when I saw him.

Q. So that you may have seen him within the last two weeks without it having made any impression on you?

A. No, sir.

Adjourned to Thursday, March 21, 1912, at 4.15 p. m.

156 UNITED STATES OF AMERICA,

*Southern District of New York:*

In the Matter of the Application for the Extradition of JOHN MCNAMARA, under the Treaties Between the United States and Great Britain, on the Charge of Burglarizing the Garage of Thomas J. Trapp.

Before John A. Shields, Esq., U. S. Commissioner.

NEW YORK, *March 22, 1912.*

Present:

The Commissioner.

Appearances:

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

Mr. BATTLE: I understand the witness whom I expected to put on the stand was here yesterday and is not able to come today, and I am instructed to say and I will close my case without putting him on.

157 The COMMISSIONER: I understand as far as you are concerned, you close your case?

Mr. BATTLE: Yes.

The COMMISSIONER: And will not reopen?

Mr. BATTLE: I will close now.

Mr. FOX: Now, in regard to this case I have got testimony to offer in rebuttal. Some of that will be in the nature of depositions. Some of those depositions are on the way. We have in addition

to that witnesses who are gradually being gathered together, and I suggest that this case stand over until the second of April, when I will close my case in one hearing.

The COMMISSIONER: Make it Tuesday at 2 o'clock.

Mr. FOX: I won't ask you to await the arrival of depositions.

The COMMISSIONER: If you can get your witness here, Mr. Battle, I will hear him that day; if you think it necessary I will receive his testimony before Mr. Fox puts in his case.

Mr. FOX: Of course I want it put in before I begin.

The COMMISSIONER: Certainly.

Adjourned to Tuesday, April 2, 1912 at 2 P. M.

158 UNITED STATES OF AMERICA,  
*Southern District of New York.*

In the Matter of the Application for the Extradition of JOHN McNAMARA, under the Treaties Between the United States and Great Britain, on the Charge of Burglarizing the Garage of Thomas J. Trapp.

Before John A. Shields, Esq., U. S. Commissioner

NEW YORK April 2, 1912.

Present:

The Commissioner,

Appearances:

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

HENRY ELSWORTH SKELTON, called as a witness on behalf of the accused, being sworn, testified as follows:

Direct examination by Mr. BATTLE:

Q. Mr. Skelton, where do you reside?

A. 449 West 44th Street.

159 Q. In this city?

A. In the City of New York.

Q. What is your business?

A. I am employed by the New York Central Railway, as doorman, in the West Shore Ferry House.

Q. Whereabouts?

A. At the foot of 42nd Street—42nd Street Ferry, west.

Q. Employed by the New York Central Railway, were you not?

A. 42nd Street West—on the west shore.

Q. Are you employed by the West Shore Railroad?

A. No, I am employed by the New York Central.

Q. When did you go to work there?

A. I went to work there on the evening of September 15th, 1911.

Q. Last September?

A. Last September.

Q. Have you been there right straight along since that time?

A. Yes, sir.

Q. Working there now?

A. Yes, sir, at the present time.

Q. Will you look around here and say if you see any one that you saw there at that ferry soon after you went there to work?

A. I saw him (indicating the defendant).

Q. What time was it you saw him?

A. Well, it was a short time, a week, after I went to work there, in the neighborhood of half past nine or nine o'clock.

Q. What were the circumstances under which you saw him?

A. This gentleman came through the avenue—the gangway, we call it. There are no people allowed there without a ticket, and I am there to stop every person that goes through, and I stopped him and told him he would have to go around through the  
160 ferry house, where the passengers go.

Q. You had this conversation with him?

A. I told him that.

Q. How soon after that was it that you next saw him?

A. About two nights after that.

Q. And what took place when you saw him on the second occasion?

A. Well, the second time he came I received a ticket from the vehicle there. He came over to me and says, I fooled you this time, I came over the regular way, and the gentleman handed me a cigar. I remember it very well.

By the COMMISSIONER:

Q. How many times did you see this man all together?

A. That is all.

Q. Those two occasions?

A. Yes, those two occasions.

By Mr. BATTLE:

Q. You saw him once when he was trying to go through the wrong way?

A. Yes, sir.

Q. And you told him that he was going through the wrong way?

A. Yes, sir.

Q. The next time you had this talk with him he gave you a cigar?

A. He gave me a cigar.

Q. Did that impress it on your mind?

A. It would impress me anyway, and I says to the gentleman, that he looked large enough to be a White Hope.

161 Cross-examination by Mr. Fox:

Q. Mr. Skelton, what was your business before you went on this ferry?

A. Why, I was an advertising solicitor.

Q. For whom?

A. Myself. I done advertising—general advertising.

Q. Where was your place of business?

A. I was in Philadelphia at the time.

Q. Philadelphia?

A. Yes, sir.

Q. Had you ever lived in New York—I assume you live here now?

A. Yes.

Q. Then, you came from Philadelphia in September?

A. No, came here in May.

Q. Now in May, did you immediately go to work anywhere?

A. No, I did not.

Q. Where did you live at that time?

A. I lived at 509 West 11st Street.

Q. With whom?

A. With my sister.

Q. And her name?

A. Mrs. Gus Bender.

Q. And you live now where?

A. 119 West 14th Street.

Q. And you did not work then from May until September 6th?

A. September the 6th.

Q. And then you went to work for this ferry company?

A. For the ferry company.

Q. Now, you say you are a doorman. Are you the man that is at the gate where the vehicles come in and where the passengers go?

A. At the present time I am there as doorman. At the time, I was vehicle ticket collector.

Q. Had you had any previous experience in this business?

A. In the railroad business?

Q. Yes.

A. No.

Q. Now, who spoke to you about this case?

A. Why, there was some tall, large gentleman came down there and he had the pictures, and was showing them around.

Q. Came around where?

A. Around the dock.

Q. Around the dock or the ferry house?

A. Well, the ferry house, out on the bridge.

Q. And who was this gentlemen?

A. Why, Mr. Oakes, I believe.

Q. And what did he have with him?

A. He had photographs.

Q. How many?

A. Two.

Q. Of the same man, that is, two pictures of the same man?

A. Two photographs, yes.

Q. Of the same man?

A. Yes.

Q. And when was that that he called on you, or was that at this dock?

A. About three weeks ago.

Q. Did he come to you directly?

A. No.

Q. Who did he go to?

A. Why, he was showing it to the bridge man or railroad porter there, and I happened to see them, and I said that I recognized the picture as a gentleman who went through there.

Q. What did he say to you, if anything, about the month 163 of September?

A. He did not say anything except he asked me when I was employed there—when I went there.

Q. Tell us what he said to you?

A. That is all. He asked what time I went to work there. I told him the 6th of September. And he asked me if I recognized that picture, and I said yes, as the man going through the avenue.

Q. Go ahead?

A. And I also told him the circumstances, about my sending him back, and about him coming a couple of nights after and coming out, and he said, well, I fooled you this time for I went through the right way, and he gave me a cigar, and that is all.

Q. He did not give you a card did he?

A. No, sir.

Q. Did this lawyer give you a card?

A. No, sir, he did not.

Q. Did he get you to make an affidavit?

A. Yes.

Q. Where did he get you to make your affidavit?

A. Why, he sent me over to the Knickerbocker Hotel.

Q. What did he pay you?

A. There was no pay.

Q. When did you become the doorman?

A. Why, just before the holidays.

Q. Just before Christmas. You do not keep a diary, do you?

A. No, sir.

Q. And you have seen a great many passengers going through the ferry house?

A. Oh, yes.

Q. And what date would you say that this man went improperly through this gangway, the bridge?

A. Well, I could not. I should say probably four or five 164 nights after I was there, for I know I was new, and the gateman and I went down. He says that's right; don't let anybody come through here without they have a ticket.

Q. Was anybody with him?

A. No, there was no one.

Q. You did not make a memorandum of that in any way or make any report of any kind to the company?

A. No, I did not.

Q. Did you take particular notice of him on that occasion, other than his height?

A. Yes, I noticed that he was slightly intoxicated.

Q. He was then going to New Jersey?

A. Yes, he was on his way to Weehawken.

Q. How was he the second night?

A. Well, he only came over and handed me a cigar and made that remark and went on, because I was a little busy there, and the vehicles coming, you have to take care of them.

Q. You had never seen that man before?

A. Not to my knowledge, no.

Q. And you never saw him but once after according to your testimony?

A. Yes, sir, I saw him on two different occasions.

Q. And those occasions were how far apart?

A. Well, may be two nights.

Q. Now, was not it longer?

A. I don't know.

Q. You are sure of that?

A. Well, I would say two or three nights, but it was shortly after.

165 Q. How many people go through that ferry on an average daily?

A. Oh, I have no idea.

Q. How long after this occurrence, where he came in the gangway and you turned him back, how long a time had elapsed?

A. In what way?

Q. Well, I am asking how long it took from the time you stopped him?

A. Oh, that is only a couple of minutes.

Q. Was it as long as a couple of minutes?

A. Yes, it was a couple of minutes.

Q. And the next occurrence was not longer than a minute?

A. He walked right out—gave me a cigar and made the remark, "I fooled you this time" and then walked on the boat.

Q. Outside of the business of advertising solicitor in Philadelphia, what did you do in Philadelphia?

A. Outside of the soliciting?

Q. Yes. You have not been an advertising solicitor all your life?

A. Oh, no. I have been in the restaurant business.

Q. What else?

A. That is all.

Q. Do you know Mike Dolan in Philadelphia?

A. No.

Q. Never heard of him?

A. No, I have not.

Q. Nor Lofton?

A. No.

Q. Sure of that?

A. Yes.

Q. Never heard of them?

A. No.

Q. Davey, did you ever hear of Davey, Mike Davey?

A. No.

166 Q. In your restaurant liquors were sold, were they?

A. Yes, sir.

The accused rests.

Mr. Fox: I offer the deposition of William Robert Stanton, sworn to on the 16th day of March, 1912, before T. S. Annondale, Justice of the Peace at New Westminster.

Also deposition of George Frederick Russell Greenwood, sworn to before F. W. Hartley a Justice of the Peace at Vancouver, on the 16th day of March, 1912, accompanied by the certificate of David F. Wilbur, Consul General of the United States at Vancouver.

I also offer in evidence the deposition of William Robert Stanton as introduced in evidence in the other proceeding.

I also offer in evidence deposition of Gordon H. Williams, sworn to on February 12th, 1912, before T. S. Annondale, Justice of the Peace at New Westminster, accompanied by the consular's certificate.

Mr. BATTLE: I object to the deposition of Gordon H. Williams, on the ground that it appears to have been taken to be used upon the application for the extradition from the United States of John McNamara, charged with the crime of breaking into or entering the premises of the Bank of Montreal and stealing therefrom \$271,000. I object to it on the ground that it was taken on that charge, and is now sought to be introduced on the charge of breaking  
167 into a garage, and taking an automobile and rug—a different charge.

Mr. Fox: I ask that those be marked in evidence.

The COMMISSIONER: They may be marked in evidence. You are entitled to have them marked in evidence any how.

Mr. BATTLE: This was taken on another charge, of breaking into this bank. We are now examining on the charge of breaking into a garage.

The COMMISSIONER: I will reserve the decision on that.

Mr. BATTLE: As to all these depositions, I wish it to be understood that I wish to reserve my right to object to any part of the testimony which is illegal and hearsay, or anything of that sort.

Mr. Fox: I now offer in evidence the deposition of Frederick Ernest Stephens, Ethel Stebbins, and Samuel Fletcher Bacon, all taken before Thomas Proctor, Justice of the Peace at Vancouver, on the 19th day of March, 1912. They are all accompanied by the Consular's certificate in the regular form.

Mr. BATTLE: I reserve my right to object to any portion of these as being illegal, incompetent or hearsay, or any other legal objection. I reserve the same right as to all the depositions that have been put in evidence.

The COMMISSIONER: The same ruling.

Mr. Fox: There is one deposition that I have not before me, but it is in the other batch. I have offered it in evidence.

Mr. BATTLE: Was that taken in the bank charge? I interpose specific objection to any deposition which is offered,  
168 which was taken in support of the application for extradition upon the charge of breaking into the bank, upon the ground that the charge now under examination is the charge of breaking into a garage and taking an automobile and rug, and is not a charge of breaking into the bank and taking a sum of money.



169 THOMAS GOODERICK, called as a witness on behalf of the  
Demanding Government, being duly sworn, testified as follows:

Direct examination by Mr. Fox:

Q. Where do you live?

A. Fort Lee, New Jersey.

Q. What is your business?

A. Blacksmithing business.

Q. And that has been your business for how long a time in New Jersey?

A. Since 1896.

Q. During the year 1911 you were in business of blacksmithing in New Jersey?

A. Yes, sir.

Q. Do you know a man named Henry F. Skilling, living in Fort Lee?

A. Yes, sir.

Q. Do you know whether or not he had automobiles belonging to him?

A. Yes, sir, he had.

Q. How many did he have?

A. He had two.

Q. Will you describe those automobiles if you can, who the maker was, the size, if one was larger than the other, and give us a general outline of those two automobiles?

A. One of them was a one cylinder Cadillac, and the other one—I am not sure, I only had one in my shop—the other, I am not sure whether it was six cylinder Oldsmobile or not.

Mr. BATTLE: If he is not certain, I move to strike it out. I move to strike out that answer, where he says he is not certain whether it was an Oldsmobile or not.

The COMMISSIONER: That is not material.

170 Q. One of these automobiles you had in your shop?

Objected to as leading the witness.

The COMMISSIONER: Well, did you have one in your shop?

The WITNESS: Yes, sir.

Q. Which one did you have in your shop?

A. I had the one cylinder Cadillac.

Q. Do you remember when that came into your shop?

A. It came into my shop the latter part of last April.

Q. Of 1911?

A. Of 1911.

Q. What did it come into your shop for?

A. To get a new business body put on it.

Q. What kind of a body had it on when it came into your shop?

A. It had a touring body.

Q. Now, he came to have a business body put on it?

A. Yes, sir.

Q. Now, what was done in that connection in regard to putting a business body on by you?

A. Well, I had to take the other one off and build a new one and put it on.

Q. You took the touring body off?

A. Yes, sir.

Q. That was on it when it came into your shop?

A. Yes, sir.

Q. And you put a business body on it?

A. Yes, sir.

Q. Now, when would you say that business body was finished or put on by you as to the time of the year 1911?

A. Well, I cannot give you just the date, but it was finished about the first week in May.

Q. First week in May, and certainly that business body was on it in June?

A. Yes, sir.

Q. When that automobile, that Cadillac as I think you have described it, with the business body on it, when did it go out of your shop?

A. About the middle of May.

Q. Where did it go to?

A. Mr. Kerwin took it away. Where he took it I don't know, or, whether he took it to his own place or Mr. Shilling's place.

Q. Kerwin took it from your place?

A. Kerwin took it from my place.

Q. Have you ever seen that automobile since?

A. I have not seen it for months. I seen it running around for about one month after it went from my place.

Q. Have you seen it since that month?

A. No, sir, I have not.

Q. Have you ever seen it since with a touring body on it?

A. No, sir.

Cross-examination by Mr. BATTLE:

Q. Who was Kerwin?

A. This gentleman, here (indicating).

Q. What was his business?

A. He is in the automobile business, engineering and so on.

Q. Is he in business for himself?

A. Yes, sir.

Q. You say you saw it running around for about a month?

172 A. About one month after it went out of my place.

Q. What is your best recollection as to when it went out of your place?

A. It went out of my place about the middle of May.

The COMMISSIONER: 1911?

The WITNESS: 1911, sir.

Q. Do you recall the last time you saw it after it went out of your place, do you recall what occasion it was when you saw it?

A. No, I cannot do anything like that.

Q. You cannot remember when you saw it?

A. No.

Q. Have no distinct recollection?

A. All I know, it was about a month after it went out of my place.

Q. How do you know it was a month?

A. Well, I seen it around the street.

Q. How do you know it was only a month—might it have been a longer or shorter time?

A. It might have been.

Q. Who asked you to come over and testify in this case?

A. I cannot tell you the gentleman's name.

Q. Is he here in court?

The COMMISSIONER: You were subpoenaed, were you not?

The WITNESS: Yes, sir, I was subpoenaed here.

Q. Who asked you to come, who first spoke to you about it?

A. This gentleman here (indicating).

Q. What is his name?

A. William H. Minster.

Q. That is the gentleman standing right next Mr. Thornhill, the gentleman with the light coat?

A. No, the gentleman with the dark coat—this gentleman here (indicating).

Mr. BATTLE: It is admitted that he is one of the plaintiffs.

Mr. FOX: No, we don't admit it. Why should we?

Mr. BATTLE: I will recall him and ask him.

Q. This gentleman here in the dark coat first spoke to you about the case?

A. Yes, sir.

Q. What did he say to you about it?

A. Well, he came in the shop and asked me if I remembered having such a car in the shop belonging to Mr. Shilling. I said yes. I described the car to him, a one cylinder Cadillac.

Q. Did you make a statement for him?

A. I don't know as I have.

Q. Did you sign a paper?

A. I signed nothing.

Q. Was a stenographer present, anybody to take down what you said?

A. No. What I told him he no doubt put it on a piece of paper, but there was no signing of anything.

Q. He put it down on a piece of paper?

A. Yes, sir.

Q. Did he serve a subpoena on you to come over here?

A. Another gentleman served a subpoena on me.

Q. What gentleman?

A. That gentleman in the black coat.

Q. What is his name?

A. I don't know.

Q. Do you know his name?

A. Trathen.

Q. Did he have any conversation with you?

A. Nothing at all.

Q. Was anything paid to you for coming over?

174 A. I was paid my time for coming over here.

Q. How much were you paid?

A. \$2.75.

Q. Who paid it?

A. This gentleman here (indicating).

Q. Mr. Minster, the man in the black coat?

A. Yes, sir.

Q. Was anything else offered to you besides that?

A. No, no.

By Mr. Fox:

Q. Now, you never saw that car running around Fort Lee or anywhere else after the 4th of July, 1911, did you?

A. The car I had in the shop?

Q. Yes.

MR. BATTLE: I object to that as leading.

A. I cannot swear to anything I ain't sure of.

The COMMISSIONER: When was the last time you saw that car?

The WITNESS: About one month after I turned it out of the shop.

175 ARTHUR E. KERWIN, called as a witness on behalf of the Demanding Government, being duly sworn, testified as follows:

Direct examination by Mr. Fox:

Q. Where do you live?

A. Fort Lee.

Q. Do you occupy any official position connected with the town of Fort Lee?

A. I am Mayor of the town.

Q. What is your business?

A. I am a machinist.

Q. And that has been your business in Fort Lee for how long a time?

A. Why, in Fort Lee I have only lived there for about a year and a half. I have a place in town.

Q. In New York here?

A. Yes, sir.

Q. Do you know a man named Henry F. Shilling living in Fort Lee in New Jersey?

A. Yes, sir.

Q. Do you know how many automobiles he has or had?

A. To the best of my knowledge he had two.

Q. Did you ever see him with more than two?

A. No, sir.

Q. Now, can you tell us of what make those automobiles were?

A. One was a Cadillac, and the other an Oldsmobile, 1908 Touring Car.

Q. The Cadillac one cylinder that you have referred to, was that the first automobile he had or not?

A. Well, I would not say it was the first one he had.

Q. I mean, the first you ever saw there?

A. Yes, sir.

Q. Did that Cadillac machine ever go into your shop or into your possession?

A. Yes.

176 Q. When?

A. I am not quite positive about that, sometime in the spring, early in the spring.

Q. Was it before the 4th of July, 1911?

A. Sometime in the early part of—probably around the first of April, somewhere around that time.

Q. Did it remain in your possession any length of time?

A. Yes.

Q. How long a time?

A. It is in my possession now.

Q. Since it has been in your possession has that machine been out, been used by Schilling?

A. Oh, yes.

Q. How often?

A. Oh, quite a little. I would not say just how long he used it—I suppose a couple of months.

Q. A couple months?

A. Yes, sir.

Q. And when would you say that particular machine, the Cadillac machine, was last used?

A. It must have been around the early part of August.

Q. 1911?

A. Yes, sir.

Q. And since that time it has not been out of your possession to be used by anybody?

A. No.

Q. When it came into your possession did that machine have a touring body on it?

A. Yes, sir.

Q. It had a touring body on it?

A. Yes, sir.

Q. What has it on now?

A. Business body.

Q. When was it that it first came into your possession with a business body on it?

A. When I took it from Mr. Gooderick's shop.

177 Q. It was taken from your shop and brought to Gooderick's shop—the touring body was on it when it went from your shop, and the touring body was taken off and returned to you with a business body on it?

A. Well, in this way, that the rear seat was cut off and a box

placed over the rear seat—just took and cut the body in half. Cut the rear seat off and put a box over the rear seat.

Q. But the car as it now is with this business body on it has not been out of your shop since August?

A. No.

Q. Now, do you know anything about this other machine he has as to who the maker of it is?

A. The Old's machine.

Q. Well, is it an Oldsmobile?

A. Yes, sir.

Q. How many cylinders??

A. Four.

Q. Has that been in your place at any time?

A. No, I don't think it ever was in my place.

Q. Have you seen it around the town?

A. Yes.

Q. Now, when you first saw that Old-mobile did it have a touring top on it?

A. It had a touring body on it.

Q. Did you see it after without a touring body?

A. Yes.

Q. What had it on it?

A. It had a business body on it.

Q. Describe that business body if you recollect it?

A. A separate body altogether—a new body. To the best of my recollection it was built by a man named Franklin.

Q. The entire touring body was taken off, was it?

A. I had nothing to do with it.

178 Q. Oh, no, but as you saw it?

A. Yes, sir.

Q. And the touring body was taken off and it had a business body?

A. Yes.

Q. Platform with sides, or just a platform?

A. To the best of my knowledge, it was a seat up near the dash, and a low box in the rear.

Q. Was that the seat the driver of the car sat on?

A. Well, double seat, you know.

Q. What I mean is, the seat was in the front of the car, and the business body was behind it, was it not?

A. Well, yes.

Q. Do you recall when you first saw the change that was made in the car?

A. The automobile?

Q. Yes.

A. No, sir. No, I don't recall.

Q. Did you see that car during the summer of 1911?

A. Oh, yes.

Q. Did it have a business body on it then?

A. I saw it both ways, before it was changed to anything like that.

Q. When the change was made, speaking of the change, was it changed to a touring body afterwards?

A. Yes.

Q. Did you see that car during the month of September, 1911, if you recollect?

A. I could not say that. I was not impressed enough with it to notice.

Cross-examination by Mr. BATTLE:

Q. The first car you were talking about, Mr. Kerwin, that Cadillac car, you say you got that back from Mr. Gooderick's shop  
179 about what time?

A. Some time either in April or May, some time.

Q. After the business body had been put on?

A. Yes.

Q. That was in April or May?

A. Yes.

Q. Which would be your best recollection, April or May?

A. It would probably be May. The weather opened up.

Q. At that time it had a business body?

A. Yes.

Q. And that business body, will you describe it, how many seats it had?

A. The Cadillac model had two individual seats in front, and then a seat in the rear, and that rear seat was cut off, and just put a square box back on that.

Q. So there was two individual seats in front, one for the driver and one for some one to sit on the side, and an open body behind?

A. Yes, sir.

Q. You say you kept that car during the summer and still have it?

A. Yes, sir.

Q. Are you just keeping it on storage?

A. Yes, sir, and there is a bill due me on it for work, labor and storage.

Q. But you have allowed Mr. Schilling to use it?

A. Not since last summer.

Q. But you did allow him to use it during the summer?

A. Yes, sir.

Q. About when was the last time he used it?

A. The first part of August.

Q. Have you any recollection to be more definite about it than that?

180 A. He had a little trouble with the engine you know, he got in trouble with it, and decided that the other one would be a little more serviceable, so he lay the little one aside.

Q. Do you recall what time in August it was he used it last?

A. The early part of August. I don't know what day it was.

Q. Are you positive about that?

A. Yes, sir.

Q. What is it makes you positive about the date?

A. The ice cream business was at its height, and he had got in trouble with his little car, and pressed the other one into service.

Q. Used the other car?

A. Yes, sir.

Q. And that is the only thing that fixes it in your mind at all?

A. Yes, sir.

Q. You cannot fix any definite date?

A. No.

Q. Or any definite time?

A. No, sir.

Q. But your best recollection is that it was in August?

A. Yes, sir.

Q. Now, Mr. Cella has a large restaurant there?

A. Yes, sir.

Q. Do you know how many people his restaurant will seat?

Mr. FOX: I object to that as entirely immaterial and incompetent.

Mr. BATTLE: I will make him my witness for this purpose.

Q. About what is the seating capacity of his restaurant?

A. I have seen 200 people sitting in there.

Q. How many?

A. Two hundred.

181 Redirect examination by Mr. FOX:

Q. In August this Old-mobile had a business body on it, had it not?

A. I could not tell you that, because I had nothing to do with it.

Q. You spoke about pressing the other one into service?

A. Yes.

Q. And the other one would be the Old-mobile, would it not?

A. Yes, sir.

Q. But did you not see the Old-mobile in service that Schilling was using before in carrying ice cream?

A. I don't know. I would not like to say they were running it just at that time. I don't know just when they started, or anything about it.

Q. Did you see it running at all after August, the Old-mobile?

A. The Old-mobile? Oh, yes, I saw it running after that.

Q. After August?

A. Yes.

Q. Could you tell how long after August?

A. I saw it running in cold weather.

Q. October?

A. Yes.

Q. With a business body on it?

A. No, it had the touring body.

Q. When did you see it with the business body on it, running, before October?

A. Sometime during the latter part of the summer—I would not know just when.



Q. And you are sure you saw it running in October?

182 A. I would not swear to that, that it was October. I said, cold weather.

Q. But if it appears that it was in November, that would agree with your recollection, wouldn't it?

A. I don't know whether it was October or November. I know it was cold weather.

Q. And until the cold weather came it was used for business purposes, was it?

A. I don't know.

Mr. BATTLE: You say you saw it with a touring body on around about October?

Mr. FOX: No, he did not. He said in cold weather.

Mr. BATTLE: The first time, he said it was in October.

By Mr. BATTLE:

Q. What is your best recollection about when you saw it?

A. I could not tell you. The only way I can remember that at all is that I had some business—I was running cars for a moving picture concern, and a short car, and they hired Mr. Schilling's car one day, and just what day that was, I could not recollect.

Q. But you remember noticing that it was a touring car?

A. Yes.

Q. Was it very cold weather?

A. It was not very cold weather.

Q. Now, was this touring body it had on, was it the same touring body that the Old-mobile car had previously on it?

A. To the best of my knowledge.

183 Q. So that what happened was that in the summer time they took off this touring body and substituted for it this business body?

Mr. FOX: Do you know anything about it? You don't know it was the same body?

The WITNESS: To the best of my knowledge, it was.

By Mr. BATTLE:

Q. And the business body had two seats?

A. It had. It was not two seats, but one seat that would seat two people.

Q. Had a double seat to seat two people?

A. Yes, sir.

Q. How many double seats in the touring body?

A. It had five seats.

By Mr. FOX:

Q. Now, it did not have a double seat, but had a seat that seated two people?

A. Yes, sir.

Q. And that seat was in the front part of the car where the driver sat?

A. The seat holds two people.

184       JOSEPH SPERONI, called as a witness on behalf of the Demanding Government, being duly sworn, testified as follows:

Direct examination by Mr. Fox:

Q. Mr. Speroni, where do you live?

A. Fort Lee, New Jersey.

Q. How long have you lived there?

A. Seven years.

Q. What is your business?

A. Furniture manufacturer.

Q. Have you any other business?

A. No, not I, but my brother has.

Q. What is the firm name?

A. Speroni Brothers.

Q. Do you remember or do you know Henry F. Schilling in Fort Lee?

A. Yes, sir.

Q. How long have you known him?

A. About a year.

Q. Do you know whether or not a year now, a year from now?

A. Yes, not a year.

Q. Did you know him all of last summer, the summer of 1911?

A. Yes, sir, summer of 1911.

Q. Do you know whether or not he had any automobile?

A. Yes, sir.

Q. Do you know how many he had?

A. Two.

Q. Can you describe those automobiles?

A. A one cylinder Cadillac and a four cylinder Oldsmobile.

Q. Did your firm at any time do any work upon this Oldsmobile?

A. We started this Oldsmobile and made a body for it quite late in the summer.

185       By the COMMISSIONER:

Q. Made it a body, what kind of a body?

A. We made a delivery body.

Mr. BATTLE: A business body?

The WITNESS: A business body.

By Mr. Fox:

Q. Now, before you built that business body, did you see the car before the business body was put on it?

A. Yes, it was stored in my place.

Q. Can you tell us when it was it came into your place?

A. The beginning of the summer, about June or July.

Q. Do you know when it was the touring body was taken off that car by your firm?

A. In July.

Q. Do you know about when in July?

A. About the latter part.

Q. Was it not about July 24th?

The COMMISSIONER: He said the latter part.

Q. Did that car with the business body ever come back to your firm again to be altered?

A. Yes.

Q. And what then was to be done to it?

A. The gears were stripped, and took off and put on a touring body.

Q. Was that the same touring body that had been on it before?

A. The same touring body.

Q. Now, tell us when it was that that car came back into your place to have a touring body restored?

186 A. That was about the latter part of September.

Q. What part of September?

A. Latter part.

Q. Now, isn't it a fact that you put new gearing on that car?

A. Yes.

Q. When?

A. In November—on November the 11th. I will give you the date.

Q. Now, did not that car come to have the touring body put on it three or four weeks before the new gearings were put on it?

Mr. BATTLE: I object to that as leading.

The COMMISSIONER: I will allow it.

Mr. BATTLE: I except.

Q. As I understand your testimony, now, this car came into your place to have new gearings put on it November 11th?

A. Yes. It always was in my place.

Q. It always was in your place?

A. Yes, sir. He always took it out and brought it back. Some days they did not use it, but when they did use it they would bring it back at night and put it in there.

Q. What I want to get from you is, as to whether that touring body was not put on that machine again, that is, they restored the touring body three or four weeks before November 11th?

Mr. BATTLE: I object to that. He said the touring body was put on September 11th, and gearing put on.

The WITNESS: No, in July, I said the touring body was  
187 taken off and a delivery body put on some time in July, the latter part.

Q. Then the touring body — put on the latter part of September?

A. No, the touring body was put on between September to November some time.

Mr. Fox: Well, it was not put on in September, was it?

Mr. BATTLE: He just said it was.

Mr. Fox: Between September and November.

The COMMISSIONER: Give us your best recollection when that was put on.

The WITNESS: Well, as near as I can recollect, I was called out—

he was stuck on the road—I was called out to get a car to take it home, and this was the latter part of September. Palisades Park was closed. Now, I don't know the date.

Q. Now, at that time the business body was on it?

A. Yes, the business body was on it then.

Q. Now, the Palisades Park was closed. Now, how long was it after that time that the touring body was put on?

A. Not very long.

Q. Two weeks or three?

A. Two or three weeks, something like that?

Q. Two or three weeks after?

A. Yes.

Q. The day that you speak of, where was his car stuck at that time?

A. Palisades, right at the entrance of the Park.

188 Q. Near Stobel's place, or Slabel's place?

A. I don't know the name.

Q. Was that not in the month of October?

A. No.

Q. Sir?

A. I don't think it was—the latter part of September.

Q. Well, the latter part of—the last Sunday in September?

Objected to as leading.

The COMMISSIONER: What do you mean by the latter part of September?

The WITNESS: About say between the 20th and 30th of September.

Q. And then the business body was on it?

A. And then the business body was on it.

Q. Now, fixing that time, when was the touring body put on it after that period?

A. Some time after that.

Q. How long after that?

A. It is hard question for me to answer—about three weeks.

Q. Could it have been four weeks?

A. It was three or four.

Q. It was three or four, and until that three or four weeks had elapsed, there was no touring body on this car?

Mr. BATTLE: I object to Mr. Fox giving all this testimony himself.

The COMMISSIONER: This touring car was in his place all the time.

Mr. BATTLE: Yes, sir.

189 The COMMISSIONER: Is that right?

The WITNESS: Yes, sir.

Cross-examination by Mr. BATTLE:

Q. Mr. Speroni, you testified that the car was brought to you with a business body on it and that you put on a touring body, that is right?

A. Yes, sir.

Q. The first thing you did to the car was to take off the touring body and put on a delivery body?

A. Yes, sir.

Q. You say you took off the touring body and put on a business body about July?

A. About July.

Q. What did you do with the touring body after you took it off?

A. Left it there.

Q. In your place?

A. Yes, sir.

Q. And the business body remained on?

A. On the car.

Q. And Mr. Schilling continued to be using the car?

A. Yes, sir.

Q. He took the car out whenever he wanted to?

A. Yes, sir.

Q. And it was stored in your place at night?

A. Yes, sir.

Q. Always?

A. Always.

Q. Did he take it out several times in a week?

A. Yes, took it out sometimes every other day, sometimes.

Q. And that business body had two seats on it?

A. Two seats—that is, one seat sat two people.

Q. A double seat?

A. Yes, sir.

Q. When I say two seats, I mean one seat that will carry two?

190 A. Yes, sir.

Q. Then you testified that he brought the car back some-time later on, and you took off the business body and put the touring body back on?

A. Yes.

Q. You testified first here this afternoon that it was in the latter part of September?

A. Latter part of September—when was that, that I took the body off?

Q. Yes.

A. No, it was September that I repaired it. I was at Palisade Park—it broke down, and it was two or three or four weeks.

Q. You don't remember?

A. I don't remember. Some time after that that I put the touring body on it.

Q. You don't recall when it was?

A. I don't recall when it was.

Q. Who first spoke to you to ask you to come over, the same gentleman that Mr. Gooderick pointed out?

A. Yes, sir.

Q. The name—Mr. Minster?

A. Yes, sir.

Q. The man there with the dark overcoat?

A. Yes, sir.

Q. He questioned you I suppose about this matter?

A. He simply asked me if I knew anything about the car.

Q. Did he take the statement down?

A. I believe he wrote something on a piece of paper—I don't quite recollect.

Q. Did anybody else talk to you about coming over to testify?

A. No, sir.

Q. When was this that Mr. Minster spoke to you about coming over?

A. I met Mr. Minster twice.

191 Q. You saw him twice about it?

A. Yes, sir. The last time he served me with a subpoena.

Q. Mr. Minster served you with a subpoena?

A. No, the other gentleman—Mr. Trathen.

Q. What were you paid for coming over?

A. \$2.

Q. Did any one come over with you today?

A. No, not with me.

Q. Oh, did you come over alone?

A. All alone.

Q. Did you see Mr. Minster or Mr. Trathen over there about it?

A. No, sir.

Q. That is the last time you saw them?

A. Last night.

Q. Where did you see them last night?

A. Over there.

Q. They came over last night?

A. Yes, sir.

Q. Talked with you about the case then?

A. Just told me that I had to be here today.

Q. Was any promise made to pay you anything?

A. No, sir.

Mr. Fox: And that was the time they served you with a subpoena?

The WITNESS: Yes, sir.

192 GEORGE S. SLABEL, called as a witness on behalf of the Demanding Government, being duly sworn, testified as follows:

Direct examination by Mr. Fox:

Q. Mr. Slabel, where do you reside?

A. Palisade.

Q. That is in Fort Lee?

A. In the Borough of Fort Lee.

Q. What is your business?

A. I am a confectioner and assistant Post Master.

Q. Keep a candy store?

A. Confectionary store.

Q. Were you in that business in September of last year?

A. Yes, sir.

Q. Where is your store or place situated in connection with Palisade Park?

A. It is right opposite the main entrance.

Q. Do you know a man in Fort Lee named Henry F. Schilling?

A. Yes, sir.

Q. Have you ever seen him with an automobile in your neighborhood?

A. Why, he stuck there one Sunday.

Q. You have seen him with an automobile when he was stuck one Sunday. Now, was that Sunday in the last year?

A. That was in 1911, yes, sir.

Q. And when?

A. Why, sometime after the park was closed, and on a rainy Sunday afternoon.

Q. After the park was closed?

A. Yes, sir.

Q. And the park you refer to is Palisade Park?

A. Palisade Park.

193 Q. Do you know the kind of build of machine that he had at that time?

A. Yes. It was a square looking body. I went over and looked at it. It was made to order I think. Had a sort of light oak piano finish. It was raining that afternoon, and I noticed the varnish did not hold up as well as it might.

Q. Do you know whose make of machine it was?

A. What the make of the automobile?

Q. Yes.

A. Why, I seen the machine—the one before of Mr. Schilling's was an Old's machine. He told me at the time that he intended to convert it into a delivery car.

Q. Now, at the time was Schilling driving the machine?

A. Schilling was driving the machine.

Q. Had that machine a touring body on it or a business body at that time?

A. What time do you refer to?

Q. When the car was stuck there?

A. It had a business body on it.

Q. Do you know who came to help Schilling out that day?

A. No, sir, I do not.

Q. It had no touring body on it at that time?

A. No, sir, it had a business body on it.

Cross-examination by Mr. BATTLE:

Q. Who asked you to come over to testify?

A. Why, the same gentleman that asked Mr. Gooderick came over.

Q. The gentleman with the black overcoat, Mr. Minster?

A. Yes, sir.

194 Q. Were you served with a subpoena by Mr. Trathen?

A. Last night or the afternoon rather.

Q. Did Mr. Minster—how often did he talk to you about the case?

A. Why, he had been there twice before.

Q. Did he take any statement from you?

A. He did not take any statement. He made notes while I was talking.

Q. How long ago was that?

A. Why, that is within the last two weeks.

Mr. FOX: James McNally. I ask for an attachment against that witness. There is proof of service of a subpoena on him—James McNally. He was subpoenaed and paid his witness fee.

The COMMISSIONER: You will have to apply to the Court.

Mr. FOX: Now, I offer in evidence a certificate from the Weather Bureau as to the condition of the weather on September 16th, 1911. I did not subpoena the witness.

Mr. BATTLE: That is, the weather here in New York City?

Mr. FOX: Yes, the weather in New York City.

Mr. BATTLE: I have no objection to that.

The COMMISSIONER: Let it go in.

This Certificate shows the temperature on September 16, 1911, to have been—

Maximum.	Minimum.	Mean.	Normal.
76	62	69	66

Mr. FOX: Now, I have here another paper that I want to offer in evidence (showing same to Mr. Battle).

Mr. BATTLE: I will accept it subject to verification.

Mr. FOX: I do not want to bring the witness here.

Mr. BATTLE: I will admit it subject to verification.

195 Mr. FOX: I offer in evidence a certificate from the Palisade Realty & Amusements Company showing that Palisade Park closed for the season on Sunday, September 24th, 1911.

Mr. BATTLE: It says opened May 20th, 1911, and closed September 20th, 1911, reopened up one day, September 24th, 1911, and then closed for the season. We do not object to that, but ask that it be taken subject to verification.

Mr. FOX: Now, I will have to ask an adjournment until we can get this witness here. If you will admit this, that he is an undertaker in Fort Lee, and on the 19th day of September, on this Oldsmobile, he took a corpse from Paterson and brought it to Fort Lee. Now, if you will admit that.

Mr. BATTLE: I will admit that McNally will so testify if he is called.

Mr. FOX: I want to show that on September 19th, 1911, this Oldsmobile with its business body on it was taken by Schilling at the request of McNally Brothers over to Paterson, New Jersey, and there the corpse of Amelia Lewis was put upon it and brought back to Fort Lee for burial. That shows that it had not a touring body on it.

Mr. BATTLE: I will admit that McNally would so testify, with the same force and effect as though he was here present.

It is stipulated that the man referred to by the witness as Mr.



196 Minster, the man with the black overcoat, who talked to the witnesses, and the man referred to as Trathan, who served subpoenas on witnesses, are both employed by the Pinkerton Detective Agency.

197 DAVID C. THORNHILL, recalled.

By Mr. FOX:

Q. Mr. Thornhill, on page 48 of your testimony—that is, 48 of the stenographer's minutes, in which your testimony appears this question was asked you: "Q. And your agency is working on this case and trying to get that reward"? and the answer as it appears in the stenographer's minutes was "Yes." Was that your answer?

A. It was not.

Q. Do you desire to correct that testimony?

A. I do.

Q. Is your agency working on this case and trying to get that reward?

A. We are not.

Q. Does the reward enter at all into the compensation of your agency for the work that they did in that case?

A. It does not.

Cross-examined by Mr. BATTLE:

Q. Your agency is working on the case?

A. Yes, sir.

Q. Now, there is a reward?

A. There is a reward offered.

Q. How much is that?

A. \$5,000.

Q. And 10 per cent of the amount of the recovery?

A. Yes.

Q. \$5,000 reward and 10 per cent of the recovery, is that it?

A. Yes, sir.

Q. And who is to get that reward?

A. Anybody making the arrest or recovering the money outside of Pinkerton's Detective Agency is entitled to it. The circular stipulates that this agency does not operate for a reward.

198 Q. Suppose a Pinkerton's man, detective, got a conviction, would not he be entitled to the reward?

A. He would not.

Q. Could he resign from the agency and take the reward?

Objected to.

A. He could resign. We could not control him then.

Q. If he resigned, he could get the reward could he not? Is that not the terms of the reward?

A. No. If the man was in the employ of Pinkerton's Agency, our circular issued states this agency does not operate for a reward. But it would then be, if he did resign, the circular being in opera-

tion at the time, it seems to me would set him aside, because he undertook at that time.

Q. All that that circular says, is that the agency itself?

A. Or its representative or its operators.

Q. Who offered that reward?

A. The Bank of Montreal.

Q. Has any other reward been offered?

A. Not that I know of.

Q. By any other person?

A. Not that I know of.

Q. Has there been any reward offered in the automobile case?

A. Not that I know of.

Q. The reward is in the bank case?

A. In the bank case.

Adjourned to Friday, April 5, 1912, at 2 P. M.

199 UNITED STATES OF AMERICA.

*Southern District of New York:*

In the Matter of the Application for the Extradition of JOHN McNAMARA, Under the Treaties Between the United States and Great Britain, on the Charge of Burglarizing the Garage of Thomas J. Trapp.

Before John A. Shields, E-sq., U. S. Commissioner.

NEW YORK, April 5, 1912.

Present:

The Commissioner.

Appearances:

Charles Fox, Esq., for the Demanding Government.

George Gordon Battle, Esq., Counsel for Accused.

Abram J. Rose, Esq., for the Bank of Montreal.

200 HENRIETTA CAIROLA, a witness called on behalf of the Demanding Government, being duly sworn, testified as follows:

Direct examination by Mr. Fox:

Q. What is your name?

A. Henrietta Cairola.

Q. Where do you live?

A. Fort Lee, New Jersey.

Q. How long have you lived in New Jersey?

A. It will be five years in July.

Q. Do you remember a family by the name of Ryan living at Fort Lee?

A. Yes, sir.

Q. You live with your parents at Fort Lee?

A. Yes, sir.

Q. How near to the Ryan House is the house that you live in with your parents?

A. Right next door.

Q. Right next door?

A. Yes, sir.

Q. When did you first become acquainted with the Ryan family?

A. When they went to their own house.

Q. Which was about when?

A. About a year and a half ago.

Q. Did you visit the Ryan family very often?

A. Yes, sir.

Q. How frequently?

A. Well, sometimes two or three times a week, sometimes less.

Q. Was there any week that you did not visit them some time?

A. Yes, sir.

Q. When was that period?

A. I do not remember.

Q. Well, taking last fall, say the first of September as a starting point, how often did you visit the family from September until, we will say, December?

A. Well, About two or three times a week.

Q. Do you know who consisted the Ryan family, how many there were in it?

A. Yes, sir.

Q. How many?

A. Five, three children and Mr. and Mrs. Ryan.

Q. Did you ever see Mr. McNamara there at that house?

A. Yes, sir.

Q. You have seen him here in court?

A. Yes, sir.

Q. When was it you first saw Mr. McNamara at the Ryan house?

A. About the latter part of November.

Q. In what year?

A. This past year.

Q. 1911?

A. Yes, sir.

Cross-examination by Mr. BATTLE:

Q. Miss Cairola, you are employed, you are in business, aren't you?

A. Yes, sir.

Q. Your business is over in New York City, is it not?

A. Yes, sir.

Q. What time do you leave Fort Lee?

A. 5 minutes past seven I am out of the house, and sometimes earlier.

Q. Sometimes earlier?

A. Yes, sir.

Q. What time do you get back?

A. Never before half past seven.

Q. And every day, is it?

A. Every day.

202 Q. How long have you been working at this place where you are working at now?

A. About a year now.

Q. About a year?

A. Yes, sir.

Q. So for the past year you have been leaving your home in Fort Lee five minutes to seven and getting back at half past seven or later?

A. Yes, sir.

Q. What was the last time that you saw Mr. Ryan?

A. Mr. Ryan?

Q. Mr. McNamara?

A. About the 10th of January.

Q. Do you remember what day of the week it was?

A. No, sir.

Q. It was on the 10th of January?

A. About the 10th or 12th.

A. About the 10th or 12th?

A. I do not know the date.

Q. It was certainly not earlier than the 10th, it was the 10th or later, is that it?

A. About the 10th.

Q. About the 10th or 12th?

A. Yes, sir.

Q. You think it was a little bit after the 10th rather than before?

A. No, just around that time.

Q. And you saw him then over at Fort Lee?

A. Yes, sir.

Redirect examination by Mr. Fox:

Q. At the time you met him there at the Ryan house were you introduced to him?

A. Yes, sir.

Q. Did they at the time of the introduction make any statement where he came from?

Mr. BATTLE: I object to any statement unless made by him.

203 Mr. FOX: In his presence.

Mr. BATTLE: Statements made by a third party would not be binding.

By the COMMISSIONER:

Q. Was it a conversation?

A. No, sir, just introduced.

Q. Just introduced to him?

A. Yes, sir.

Q. Mr. McNamara was introduced to you?

A. Yes, sir.

Q. By whom?

A. I do not remember whether it was Mr. Ryan or the daughter.

Q. That is all, just introduced to you?

A. Yes, sir.

Q. The gentleman is in the room now?

A. Yes, sir.

Q. Did you have any conversation with him?

A. No, sir, just pleased to meet him, no conversation.

By Mr. Fox:

Q. Didn't they say he came from California?

Mr. BATTLE: I object to that.

By the COMMISSIONER:

Q. Was anything of that kind said there?

A. Sir?

Q. What did they say to you when they introduced him?

A. They just said "Mr. McNamara", and afterwards said he came from California, and nothing else.

Mr. Fox: There was only one thing the other day. Mr. McNally was to have been here, but it appears he had a funeral. I want to introduce that certificate of the identity of the corpse, or  
204 to show there was a real funeral.

Mr. BATTLE: I have no objection to that.

Mr. Fox: I offer a certificate from the Board of Health of the City of Paterson, New Jersey, dated March 29, 1912, certifying to the death of Amelia Lewis on September 18, 1911, that the undertakers were McNally Brothers, and she was buried at Fort Lee, New Jersey, on the 20th of September.

Marked Exhibit 1 of this date.

Testimony closed.

Briefs to be exchanged and filed with the Commissioner on or before Monday, April 15, 1912.

205 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,

VANCOUVER, B. C., CANADA,

*February Thirteenth, 1912.*

I, David F. Wilber, Consul General of the United States at Vancouver, B. C., Can., hereby certify that the annexed papers, being deposition of Gordon H. Williams taken before T. S. Annandale, a Justice of the Peace for the Province of British Columbia, Canada, proposed to be used upon an application for the extradition from the United States of John McNamara charged with the crime of breaking into and entering the premises of the Bank of Montreal and stealing therefrom \$271,000.00 alleged to have been committed in New Westminster, B. C., Can., are properly and legally authenticated so as to entitle them to be received in evidence for similar

purposes by the tribunals of The Dominion of Canada as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of Office to be affixed this thirteenth day of February, 1912.

(Stamp.)

Fee \$2.00 U. S. Gold, paid by affixing stamp to this document.

[SEAL.]

DAVID F. WILBER,

*Consul General of the United States of America.*

206 CANADA,

*Province of British Columbia:*

REX

vs.

JOHN MCNAMARA.

The Deposition of Gordon H. Williams, 722 Third Avenue, City of New Westminster, Province of British Columbia, taken before the undersigned, a Justice of the Peace for the said Province of British Columbia, this twelfth day of February, in the year of our Lord nineteen hundred and twelve, in the City of New Westminster.

The said Deponent, Gordon H. Williams, on his oath saith, as follows: I reside in the said City of New Westminster, and am by occupation a Conductor in the employ of the British Columbia Electric Railway Company, Limited, and was during the month of September, nineteen hundred and eleven, employed as a Conductor on the Interurban Line of the said Company, running between the City of Vancouver and City of New Westminster.

I recognize the photo now shown to me and marked Exhibit A to this my deposition which I am informed and believe is a picture of one John McNamara now as I believe under arrest in the City of New York charged with the crime of breaking and entering into the Bank of Montreal, in the said City of New Westminster, and stealing therefrom the sum of two hundred and seventy one thousand dollars, as being that of a man who travelled on my car from the said City of Vancouver to the said City of New Westminster, during the early part of the month of September, that is to say on or about the seventh or eighth day of September, nineteen hundred and eleven, and who got off my said car at the tram station of the said Company at said City of New Westminster, the said man was travelling alone so far as I could see and did not see him in company with or talking to any other persons.

G. WILLIAMS.

207 Subscribed and sworn to before me this twelfth day of February, nineteen hundred and twelve.

T. S. ANNANDALE.

The deposition of Gordon H. Williams, written on the several sheets of paper, to the last of which my signature is affixed, was taken by me and signed by the said Gordon H. Williams, in my presence, in witness whereof I have signed my name.

T. S. ANNANDALE,  
*A Justice of the Peace for British Columbia.*

208 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,  
VANCOUVER, B. C., CANADA, *January 27, 1912.*

I, David F. Wilber, Consul General of the United States of America at Vancouver, Province of British Columbia, Dominion of Canada, hereby certify that the annexed papers, being the depositions of William Robert Stanton, George Greenwood and William H. G. Phipps and a true copy of the warrant to apprehend John McNamara, issued by Henry L. Edmonds, Police Magistrate for the City of New Westminster, B. C. Canada, the said copy being certified as such by A. J. Brine, District Deputy Registrar for the Westminster Registry, who is duly authorized as such, proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of unlawfully breaking and entering the counting house of the Bank of Montreal in the City of New Westminster, British Columbia, Canada and stealing therefrom the sum of two hundred and seventy-one thousand dollars found therein, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this twenty-seventh day of January, 1912.

[SEAL.]

DAVID F. WILBER,  
*Consul General of the United States of  
America, at Vancouver, B. C., Canada.*

Fee \$2.00 U. S. Gold, equal to \$2.00 local currency, paid by affixing stamp to this document.

DAVID F. WILBER,  
*Consul General of United States.*

209 CANADA,  
*Province of British Columbia,*  
*County of Vancouver:*

REX  
 VS.  
 JOHN MCNAMARA.

The Deposition of William Robert Stanton, of the City of New Westminster, in the District of New Westminster, in the Province of British Columbia, taken before the undersigned, a Justice of the Peace for the County of Vancouver, this 26th day of January, in the year of our Lord One Thousand Nine Hundred and Twelve, at the City of Vancouver.

The Deponent William Robert Stanton, on his oath, says as follows:—

I live at the City of New Westminster and am a Police Sergeant on the Police force of the said City. I recognize the photograph now shown to me and marked Exhibit "A" to this my deposition as being that of a man whom I saw in the said City of New Westminster while on duty there on two separate occasions, the first one early in the month of September, 1911 near the Central Hotel in the said City of New Westminster, and on the second occasion about two or three days previous to the robbery of the Bank of Montreal in New Westminster which took place in the early morning of the 15th of September, 1911 I saw the same man in the vicinity of the Bank of Montreal building in New Westminster.

W. R. STANTON.

Subscribed and sworn before me this 26th January, 1912.

[SEAL.]

E. J. CLARK, J. P.

210 The deposition of William Robert Stanton, written on the foregoing sheet of paper to which my signature is attached was taken in my presence and signed by the said William Robert Stanton in my presence.

In witness whereof I have signed my name and affixed my seal.

[SEAL.]

E. J. CLARK, J. P.



211 CANADA,  
*Province of British of Columbia,*  
*County of Vancouver:*

REX.  
vs.  
JOHN McNAMARA.

The Deposition of George Greenwood, of Central Park, in the County of Vancouver, in the Province of British Columbia, taken before the undersigned, a Justice of the Peace for the said County of Vancouver, this 26th day of January, in the year of Our Lord One thousand nine hundred and twelve, at the City of Vancouver.

The deponent, George Greenwood, on his oath, says as follows:

I reside at Central Park, Westminster Road, off McKay Road. The Westminster Road just mentioned is the main wagon road between Westminster and Vancouver. I have resided in the vicinity of Vancouver and Westminster for the last twenty-five years. During the week ending September 16, 1911, I was off work with an attack of grippe from Tuesday the 12th day of September to Saturday the 16th day of September. On Friday morning the 15th September feeling a good deal better about half-past seven or eight o'clock in the morning I went from my house to the Royal Oak Hotel which stands on said Westminster Road and where was the only telephone in the vicinity I could use that time for the purpose of finding out whether the British Columbia Marine Railway Limited in whose employ I was and still am had telephoned to me at the said hotel as they were in the habit of doing that where there was special work requiring my attention. On my way to the hotel along Westminster Road and about five hundred or six hundred yards on the Vancouver side of the said hotel I observed on Westminster Road a large black automobile, there was no number on said automobile.

E. J. CLARK, J. P.

212 No wind shield and no cover. The auto was an open one.

It had the appearance of being a new auto. It was coming towards me. I was going east and the auto was going west in the direction of Vancouver. My attention was called to the auto as it was running slow and the driver appeared to be a novice and not an experienced chauffeur. There were five men in the auto. The driver was an extraordinarily big man, about 45 to 50 years old. He would weigh I judge about 220 to 250 lbs. He was smooth-shaven as nearly as I remember, and wore a fawn coloured overcoat or raincoat and a black slouch hat. I positively identify the said driver as being the said person shown in the photograph hereto annexed and marked Exhibit "A" to this my deposition which I am informed is a photograph of John McNamara. The man sitting in the front seat with the driver resembled the person shown

in the photograph hereto annexed and marked Exhibit "B" to this my deposition and which I am informed is a photograph of A. Addison and I am positive that the said man was the said Addison. There were two men sitting in the rear seat. Their heads were down and I was unable to get a good view of their faces but would probably know them if I saw them again. The fifth man was standing up and appeared to have just got up from the rear seat. He had a scowl on his face and his hand was in a position as if about to draw a revolver from his pocket. He had on a collar like that shown in the photograph Exhibit "C." I stepped off the sidewalk towards the machine at this time to cross to the other side of Westminster Road on which the Hotel is. Charles Dean represented in the photograph hereto annexed and marked Exhibit "C" to this my deposition I positively identify as the man who was standing up in the auto. He wore a black derby hat and dark suit. The point at which I saw the auto was on the said Westminster Road about four miles west of Westminster and eight miles east of Vancouver, and the auto travelled slowly away in the direction  
 213 of Vancouver. On the following day, Saturday, the 16th September, 1911, I mentioned having seen the auto and the men to Mr. Griffith, a pile driver in Vancouver and paid no more attention to the matter until some time in the early part of this month when I saw in the Vancouver Province a copy of which is hereto annexed and marked Exhibit "D" to this my deposition pictures of McNamara and Dean which I at once recognized as pictures of two of the men I have seen in the auto, and I immediately communicated with Mr. Bradshaw, Chief of Police at New Westminster.

GEORGE GREENWOOD.

Subscribed and sworn before me this 26th day of January, 1912.  
 [SEAL.] E. J. CLARK, J. P.

The deposition of George Greenwood written on this and the two foregoing sheets of paper to each of which my signature is attached was taken in my presence and signed by the said George Greenwood in my presence.

In witness whereof I have signed my name and affixed my seal.  
 [SEAL.] E. J. CLARK, J. P.

214 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,  
 VANCOUVER, B. C., CANADA.

*February Third, 1912.*

I, David F. Wilber, Consul General of the United States at Vancouver, B. C., Can., hereby certify that the annexed papers, being affidavits of Thomas John Trapp and warrant for the arrest of John McNamara in Rex vs. McNamara, issued by Henry L. Edmunds,

Police Magistrate of New Westminster, B. C., Can., and dated January 26th, 1912, proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of stealing one rug from Thomas John Trapp of New Westminster, B. C., Can., are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this third day of February, 1912.

[SEAL.]

DAVID F. WILBER,

*Consul General of the United States of America.*

Fee \$2.00 U. S. gold, equal to \$2.00 local currency, paid by affixing stamp to this document.

DAVID F. WILBER,

*Consul General of the United States, Vancouver, B. C.*

215     *Warrant in the First Instance to Apprehend a Person Charged with an Indictable Offence.*

CANADA, PROVINCE OF BRITISH COLUMBIA,

*County of Westminster, City of New Westminster:*

To all or any of the Constables and other Peace Officers in the said City of New Westminster:

Whereas John McNamara of New York, U. S. A. has this day been charged upon oath before the undersigned H. L. Edmonds, Esquire, Police Magistrate for the City of New Westminster, for that he the said John McNamara on the fifteenth day of September in the year of our Lord one thousand nine hundred and eleven, at the City of New Westminster in the Province of British Columbia, did unlawfully then and there steal one Rug the property of the informant, one T. J. Trapp, contrary to the form of the Statute in such case made and provided.

These are therefore to command you, in His Majesty's name forthwith to apprehend the said John McNamara and to bring him before me or some other Justice of the Peace in and for the said City of New Westminster, to answer unto the said charge, and to be further dealt with according to Law.

Given under my Hand and Seal this 26th day of January in the year of our Lord One Thousand Nine Hundred and twelve, at New Westminster in the County aforesaid.

HENRY L. EDMONDS, [SEAL.]

*Police Magistrate.*

216     In the matter of the Criminal Code of Canada.

In the matter of the Extradition Act of Canada.

In the matter of the information and complaint of Thomas John

Trapp charging one Charles Dean with the Offence hereinafter mentioned and of the Extradition proceedings thereunder.

In the matter of the information and complaint of Thomas John Trapp charging one John McNamara with the offences hereinafter mentioned and of the Extradition proceedings thereunder.

I, Thomas John Trapp, of the City of New Westminster in the Province of British Columbia, Merchant, make oath and say:—

1. That I am the owner of an automobile of the value of \$3000.00 and I keep the said automobile when the same is not in use in a garage situate on a portion of Lot 14 in Block A in City Block 16 in the City of New Westminster in the Province of British Columbia on Royal Ave. in the said City of New Westminster.

2. That I kept the said automobile when not in use in the said garage during the month of September, 1911, and since kept and still keep the said automobile in the said garage.

3. That in the early morning of the 15th of September A. D. 1911, some person or persons did break and enter the said garage and took therefrom the said automobile and the rug hereinafter mentioned.

4. That I am informed by Miss Alice Wise of the said City of New Westminster and verily believe that on the 15th day of September A. D. 1911, at about the hour of 5 o'clock in the morning from the window of her residence near the said garage she heard the sound of persons moving around within the said garage.

5. That I am informed by my nephew, Frank Trapp of the said City of New Westminster and verily believe that he the said  
217 Frank Trapp on the said 15th day of September, A. D. 1911 between the hours of 6 and 7 o'clock in the morning while passing along Royal ave. on his way to work found the said automobile on Royal Ave. near the corner of Sixth St. and between the said garage and Sixth Street.

6. That I am informed by the said Frank Trapp and verily believe that one rug a part of the furnishings of the said automobile was missing from the said automobile and to the best of my knowledge and belief the said rug has not yet been found.

7. That the said automobile was taken from the said garage without my knowledge or consent and the said rug was taken from the said automobile and the said garage without my knowledge or consent.

8. That from information supplied to me by the Policy I verily believe that John McNamara of the City of New York in the State of New York one of the United States of America and Charles Dean of the City of Los Angeles in the State of California one of the United States of America on the said 15th day of September A. D. 1911 did break and enter the said garage and unlawfully did steal and take away therefrom the said automobile and unlawfully did steal and carry away the said rug.

T. J. TRAPP.

Sworn before me at the City of New Westminster in the Province of British Columbia in the Dominion of Canada this 27th day of January, 1912.

G. PITTENDREIGH (J. P. S. N.),  
A Justice of the Peace in and for the  
Province of British Columbia.

218 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,  
VANCOUVER, B. C., CANADA,  
February Third, 1912.

I, David F. Wilber, Consul General of the United States at Vancouver, B. C., Can., hereby certify that the annexed papers, being affidavit of Thomas John Trapp and warrant for the arrest of John McNamara in Rex vs. McNamara, issued by Henry L. Edmonds, Police Magistrate of New Westminster, B. C. Can. and dated January 26th, 1912, proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of Breaking and entering the premises of Thomas John Trapp and stealing therefrom one automobile, alleged to have been committed in New Westminster, B. C. Canada are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this third day of February 1912.

[SEAL.] DAVID F. WILBER,  
Consul General of the United States of America.

Fee \$2.00 U. S. gold, equal to \$2.00 local currency, paid by affixing stamp to this document.

DAVID F. WILBER,  
Consul General of the United States, Vancouver, B. C.

219 *Warrant in the First Instance to Apprehend a Person Charged with an Indictable Offence.*

CANADA, PROVINCE OF BRITISH COLUMBIA,  
County of Westminster, City of New Westminster:

To all or any of the Constables and other Peace Officers in the said City of New Westminster:

Whereas John McNamara of New York has this day been charged upon oath before the undersigned Henry L. Edmonds, Esquire, Police Magistrate within and for the said City of New Westminster for that he the said John McNamara of the City of New York, in the State of New York, U. S. A., at the City of New Westminster in the

Province of British Columbia, on the fifteenth day of September, one thousand nine hundred and eleven did break and enter a certain building there situated and being within the curtilage of and occupied with the dwelling house of Thomas John Trapp, but not connected with or forming part of the said dwelling house either immediately or by means of any covered or enclosed passage and one automobile of the value of Three thousand dollars the property of the said Thomas John Trapp then and there being found in the said building did then and there steal, contrary to the form of the statute in such case made and provided.

These are therefore to command you, in His Majesty's name forthwith to apprehend the said John McNamara and to bring him before me or some other Justice of the Peace in and for the said City of New Westminster, to answer unto the said charge, and to be further dealt with according to Law.

Given under my Hand and Seal, this 26th day of January in the year of Our Lord One Thousand Nine Hundred and twelve at New Westminster in the County aforesaid.

HENRY L. EDMONDS, [SEAL.]  
*Police Magistrate.*

220 In the matter of the Criminal Code of Canada.

In the matter of the Extradition Act of Canada.

In the matter of the information and complaint of Thomas John Trapp charging one Charles Deam with the Offences hereinafter mentioned and of the Extradition proceedings thereunder.

In the matter of the information and complaint of Thomas John Trapp charging one John McNamara with the offences hereinafter mentioned.

I, Thomas John Trapp, of the City of New Westminster in the Province of British Columbia, Merchant, make oath and say:

1. That I am the owner of an automobile of the value of \$3000.00 and I keep the said automobile when the same is not in use in a garage situate on a portion of Lot 14 in Block A in City Block 16 in the City of New Westminster in the Province of British Columbia on Royal Ave. in the said City of New Westminster.

2. That I kept the said automobile when not in use in the said garage during the month of September, 1911, and since kept and still keep the said automobile in the said garage.

3. That in the early morning of the 15th of September A. D. 1911, some person or persons did break and enter the said garage and took therefrom the said automobile and the rug hereinafter mentioned.

4. That I am informed by Miss Alice Wise of the said City of New Westminster and verily believe that on the 15th day of September A. D. 1911, at about the hour of 5 O'clock in the morning from the window of her residence near to the said garage she heard the sound of persons moving around within the said garage.

5. That I am informed by my nephew, Frank Trapp of  
221 the said City of New Westminster and verily believe that he the said Frank Trapp on the said 15th day of September A.

D. 1911 between the hours of 6 and 7 o'clock in the morning while passing along Royal Av. on his way to work found the said automobile on Royal Av. near the corner of Sixth St. and between the said garage and Sixth Street.

6. That I am informed by the said Frank Trapp and verily believe that one rug a part of the furnishing of the said automobile was missing from the said automobile and to the best of my knowledge and belief the said rug has not yet been found.

7. That the said automobile was taken from the said garage without my knowledge or consent and the said rug was taken from the said automobile and the said garage without my knowledge or consent.

8. That from information supplied to me by the Police I verily believe that John McNamara of the City of New York in the State of New York one of the United States of America and Charles Dean of the City of Los Angeles in the State of California one of the United States of America on the said 15th day of September A. D. 1911 did break and enter the said garage and unlawfully did steal and take away therefrom the said automobile and unlawfully did steal and carry away the said rug.

T. J. TRAPP.

Sworn before me at the City of New Westminster in the Province of British Columbia in the Dominion of Canada this 27th day of January A. D. 1912.

G. PITTENDREIGH, (J. P. S. N.),  
A Justice of the Peace in and for the  
Province of British Columbia.

222 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,  
VANCOUVER, B. C., CANADA,  
February Twenty-first, 1912.

I, David F. Wilber, Consul General of the United States at Vancouver, B. C. Can., hereby certify that the annexed papers, being affidavit of Stanley V. Trapp proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of breaking and entering the garage of Thomas John Trapp and stealing therefrom one rug and one automobile alleged to have been committed in New Westminster, B. C. Canada, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this twenty-first day of February 1912.

Fee \$2.00 U. S. gold paid by affixing stamp to this document.

[SEAL.]

DAVID F. WILBER,

*Consul General of the United States of America.*

223 In the matter of the Criminal Code of Canada.  
In the matter of the Extradition Act of Canada.

In the matter of the information and complaint of Thomas John Trapp charging one Charles Dean with breaking and entering the garage of said Thomas John Trapp, on Royal Avenue, in the City of New Westminster, British Columbia, and stealing therefrom one automobile and one rug the property of said Thomas John Trapp, and of the Extradition proceedings thereunder.

In the matter of the information and complaint of Thomas John Trapp charging one John McNamara with breaking and entering the garage of said Thomas John Trapp on Royal Avenue in the City of New Westminster, British Columbia, and stealing therefrom one automobile and one rug the property of said Thomas John Trapp and of the Extradition proceedings thereunder.

I, Stanley V. Trapp, of the City of New Westminster in the Province of British Columbia, Hardware Man, make oath and say:—

1. I am a son of Thomas John Trapp of the said City of New Westminster, the owner of the automobile hereinafter referred to and also referred to in the Affidavit in deposition of the said Thomas John Trapp, sworn unto on the twenty-seventh day of January, nineteen hundred and twelve, before Mr. G. Pittendreich, Justice of the Peace in and for the Province of British Columbia.

2. I did on Monday the 12th day of February 1912, make an Affidavit in the above matters before Thomas S. Annandale Esquire Justice of the Peace in and for the Province of British Columbia at the City of New Westminster.

3. I omitted to state in my said Affidavit the following facts, to the truth of which I now swear.

224 That when I was in said garage as stated in paragraph four of my said Affidavit, on the evening of the 14th of September, 1911, between the hours of seven and eight o'clock in the evening, when I left on the said evening of the said fourteenth day of September, nineteen hundred and eleven, the doors of said garage were both shut. The front door is always kept shut and locked except when the automobile is taken in and out, and to my personal knowledge was shut, and to the best of my belief was shut and locked at the time of my leaving said garage on said evening. The side door which opens on to my father's yard and is used going and coming to and from his house was also shut at said time. I closed it after me. The windows of said garage were also all shut at said time to my personal knowledge.

After my leaving said garage between 7 & 8 o'clock of said evening no other member of my father's family entered said garage on the evening or night of September 14th, 1911 nor until I entered it on the following morning. On the following morning viz: the morning of the 15th day of September, 1911, I was the first of my father's family to enter said garage, which I did about the hour of 8.15 o'clock of said morning, after having been informed by my brother Thomas D. Trapp that the automobile which was in the garage on the proceeding evening was standing on Royal Avenue.



I found the door leading into the yard, through which I entered said garage closed but not locked and on entering said garage I found the front door leading on to Royal Avenue partly open.

STANLEY V. TRAPP.

Sworn before me at the City of New Westminster, in the Province of British Columbia, in the Dominion of Canada this 21st day of February A. D. 1912.

T. S. ANNANDALE,

*A Justice of the Peace in and for the  
Province of British Columbia.*

225 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,

VANCOUVER, B. C., CANADA.

*February Thirteenth, 1912.*

I, David F. Wilber, Consul General of the United States at Vancouver, B. C., Canada, hereby certify that the annexed papers, being depositions of Alice Wise, Thomas Dockrill Trapp and Stanley V. Trapp, taken before T. S. Annandale, a Justice of the Peace for the Province of British Columbia, Canada, proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of Breaking into and entering the garage of Thomas John Trapp and stealing therefrom one rug and one automobile, alleged to have been committed in New Westminster, B. C., Canada are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this thirteenth day of February 1912.

Fee \$2.00, U. S. Gold, paid by affixing stamp to this document.

DAVID F. WILBER,

[SEAL.]

*Consul General of the United  
States of America.*

In the Matter of the Extradition Act of Canada.

226

In the Matter of the Criminal Code of Canada.

In the Matter of the information and complaint of Thomas John Sharp charging one Charles Dean with the offences hereinafter mentioned and of the Extradition proceedings thereunder.

In the matter of the information and complaint of Thomas John Trapp charging one John McNamara with the offences hereinafter mentioned and of the Extradition proceedings thereunder.

I, Alice Wise of the City of New Westminster, Province of British Columbia, Spinster. Make oath and say

1. I am the daughter of Mr. Jas. Wise of the said City of New Westminster, and reside with my said father in a house Number 418, Royal Avenue in the said City, near to and overlooking the garage owned by Mr. T. J. Trapp of the City of New Westminster.

2. That my bedroom in said house is situated in the back thereof and from my bedroom window I can plainly see the said garage.

3. I am well acquainted with Mr. T. J. Trapp and the members of his family, including his two sons Tom and Stanley.

4. That in the early morning of the fifteenth day of September nineteen hundred and eleven between the hours of four and five o'clock I heard sounds coming from the said garage, the window of my bedroom being open, as I always keep it at night, and I went to my said window to see what the noise was about, but there was no light in the said garage nor did I see any person or persons coming in or going out of the said garage nor did I see the automobile which is kept therein being taken into the garage or taken out of it. I concluded finally that it might have been one of the Trapp boys returning from some trip and did not bother about the matter further, although it is customary for the Trapp boys when using the garage at night to turn on the electric lights.

5. The noise which I heard issuing from the said garage  
227 sounded to me like a succession of bumps or thumps caused or made by some heavy person or persons moving or being moved in said garage.

ALICE WISE.

Sworn before me at the City of New Westminster, in the Province of British Columbia, in the Dominion of Canada, this 12th day of February, A. D. 1912.

T. S. ANNADALE,

*A Justice of the Peace in and for the  
Province of British Columbia.*

228 In the Matter of the Extraditional Act of Canada.

In the matter of the information and complaint of Thomas John Trapp charging one Charles Dean with the offences hereinafter mentioned and of the Extradition proceedings thereunder.

In the matter of the information and complaint of Thomas John Trapp charging one John McNamara with the offences hereinafter mentioned and of the Extradition proceedings thereunder.

1. Thomas Dockrill Trapp of the City of New Westminster, in the Province of British Columbia, Hardware Merchant, make oath and say:

1. I am the son of Thomas John Trapp of the City of New Westminster, Merchant, owner of the automobile hereafter referred to and also referred to in the affidavit in deposition of my said father, sworn unto the twenty-seventh (27) day of January nineteen hun-

dred and twelve (1912) before Mr. G. Pittendreigh, Justice of the Peace, in and for the Province of British Columbia.

2. The said Automobile is one manufactured by the McLaughlin Carriage Company and is commonly known as a McLaughlin 40 Horse power and bears the license number 1970, Province of British Columbia.

3. That the said automobile when not in use is kept in the garage belonging to my father situated on Royal Avenue in the City of New Westminster, adjoining the residence of Mr. Jas. Wise.

4. The said Garage has two doors leading into it both fastened by Yale locks in the inside, but entrance to the Garage can be easily made by crawling underneath the building and up through the repair pit without forcing either of the locks of the said doors. The said Garage is lighted by electric light and when I have occasion to use the said Garage, I always, as a matter of course  
229 turn on the lights.

5. That about eight o'clock on the morning of the fifteenth of September, nineteen hundred and eleven, I was informed by my cousin Frank Trapp of the said City of New Westminster, that the said automobile was standing on Royal Avenue, in the City of New Westminster, about half a block from the said Garage, the Street between the Garage and the place where the said automobile was standing, sloping down hill. I immediately went to the spot indicated by my said cousin and found the automobile standing there as reported by him and I forthwith reported the fact to my brother Stanley Trapp in the said City of New Westminster who went to the spot indicated and brought the said automobile back to the garage.

6. The said automobile when in use is driven either by myself or my brother Stanley and when not in use and in the Garage the switch plug is removed so as to render it impossible for any unskilled person, who has not a switch plug in his possession to operate the said automobile.

7. The said Switch Plug is a necessary part of the said automobile in order to make connections between the electric wires which are a part of the equipment furnishing motive power in said automobile. And the said automobile cannot be run unless the said switch plug is in place.

8. To the best of my recollection and belief, I was not in the said Garage after eleven o'clock of the night of the fourteenth of September, nineteen hundred and eleven, and at that time the said automobile was in said Garage, and I was not in the said Garage on the fifteenth day of September nineteen hundred and eleven, until about noon.

9. That neither of the locks fastening the doors of the said Garage showed any sign of having been forced but anyone having obtained access to the said Garage by means of the said repair pit could  
230 readily open the said locks from the inside of the building by means of the usual knob used in connection with said lock which are Yale locks of the ordinary Night Latch Pattern.

10. There was a scotch rug used in connection with the said automobile, which we found to be missing subsequent to the said four-

teenth day of September, nineteen hundred and eleven, and it has not since been recovered. The said rug was usually kept in the said automobile.

11. The said automobile must have been moved from the said Garage to the place where it was found *on* Royal Avenue by hand, as the machine could not have been run by its power owing to the absence of said switch plug and it was not put or left where it was found by my consent or with my knowledge or connivance.

T. D. TRAPP.

Sworn before me at the City of New Westminster, in the Province of British Columbia in the Dominion of Canada, this 12th day of February, A. D. 1912.

T. S. ANNANDALE,

*A Justice of the Peace in and for the  
Province of British Columbia.*

231 In the Matter of the Extraditional Act of Canada.

In the matter of the information and complaint of Thomas John Trapp charging one Charles Dean with the offences hereafter mentioned and of the Extradition proceedings thereunder.

In the matter of the information and complaint of Thomas John Trapp charging one John McNamara with the offences hereinafter mentioned and of the Extradition proceedings thereunder.

I, Stanley V. Trapp of the City of New Westminster, in the Province of British Columbia, Hardware Man, make oath and say:

1. I am a son of Thomas John Trapp of the said City of New Westminster, the owner of the automobile hereinafter referred to and also referred to in the affidavit in deposition of the said Thomas John Trapp, sworn unto on the twenty-seventh day of January nineteen hundred and twelve, before M. G. Pittendreich, Justice of the Peace in and for the Province of British Columbia.

2. That the said automobile when not in use is kept in a Garage which is situated on Royal Avenue in the said City of New Westminster, near to the residence of Mr. Jas. Wise and was being kept there during the month of September nineteen hundred and eleven and more particularly on the fourteenth and fifteenth days of the said month of September.

3. That the said Garage has two doors giving access thereto, both of which are fastened by Yale Locks on the inside, but it would be a simple matter for anybody desiring to gain entrance to the said garage and not having keys to open the said locks, to crawl under the building and get access to the interior by crawling up through the trap in the repair pit in said garage. And there was a window in the said garage which at the time of the taking of the said automobile from the said garage could not be fastened and access to the garage might have been obtained in that way.

232 4. That I was in said Garage on the evening of the fourteenth of September, Nineteen hundred and eleven, between the hours of seven and eight o'clock in the evening for the last time

that day and the said automobile, when I left on the said evening of the said fourteenth day of September nineteen hundred and eleven, was then standing in the said garage.

5. The said automobile when in use is run and operated either by myself or my brother Thomas D. Trapp and in order to prevent it being used by any unauthorized persons, our custom is, and was at the time of the taking of the said automobile away from the said garage on the fourteenth or fifteenth day of September, nineteen hundred and eleven, to remove the switch plug from the said automobile, which would render it impossible for any unskilled person to operate said automobile without replacing or supplying a switch plug for the purpose, but it would be possible for a skilled man, having a knowledge of repairing automobiles to so arrange the electric wires in the machine so as to do away with the necessity of a Switch Plug.

6. That on the morning of the fifteenth of September nineteen hundred and eleven, at about the hour of 8:15 in the morning I was informed by my brother Thomas D. Trapp that the said automobile was standing on Royal Avenue and he asked me to proceed to the spot he indicated about half a block from the said garage to look after the said machine and to bring it back to the garage. I first went up to the said garage and found that the said automobile was missing therefrom. I then proceeded to the spot indicated by my brother and found the said automobile standing there as stated by him.

7. I examined said automobile and found the cover partly off, the cover off the spark coil and several of the electric wires forming part of the motive equipment of the said machine disarranged, some nuts loosened on the spark coils, the whole thing appearing to — as though somebody had been trying to arrange the electric wires in such a manner as to obviate the necessity of a spark plug, which is part of the proper equipment of the machine. The Spark plug which is part of the mechanism of the machine was not in place, which would account for the manipulation of the wires above referred to.

8. I also found that the Air Throttle in connection with the carburettor was closed.

9. I then arranged the electric wires and put the switch plug which I always carry with me and drove the said automobile down to the Police Station and reported the affair to the Police and then returned to the Garage with the said machine.

10. I did not observe anything wrong with the locks on the doors of the said garage or any indications that the same had been forced, but anyone having gained access to the garage either by the window or by way of the trap in the repair pit would find it a simple matter to open the doors of the garage by turning the knobs of the locks on the inside, said locks being of the usual Yale Night Latch Pattern.

11. That in connection with the said automobile we always used a Scotch Plaid rug which was usually kept in the said Automobile and was I believe in the said automobile when the same was taken

from the said garage, and was not in the said automobile when I found the same on the morning of the fifteenth of September, nineteen hundred and eleven and I have not seen it since.

12. The said automobile was not removed from the said garage on the morning of the fifteenth of September, nineteen hundred and eleven nor was it left at the place where it was found on Royal Avenue by me nor with my knowledge or consent or connivance or with the knowledge, consent or connivance of any members of my family.

234 13. The said Automobile could have been moved from the said garage to the spot where it was found standing on Royal Avenue by being pushed or pulled there by hand as Royal Avenue slopes, down hill from the garage to the place where it was found.

14. There were plenty of foot-marks around the front of the machine which would indicate that some person or persons had been busily endeavoring to get the mechanism to work in order that the automobile might be run by its own power.

15. I was not in the said garage between the hours of eight o'clock on the evening of the fourteenth of September, nineteen hundred and eleven, and eight-thirty o'clock in the morning of the fifteenth of September, nineteen hundred and eleven.

STANLEY V. TRAPP.

Sworn before me at the City of New Westminster, in the Province of British Columbia in the Dominion of Canada this 12th day of February, A. D. 1912.

T. S. ANNANDALE,  
*A Justice of the Peace in and for the  
Province of British Columbia.*

235 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,  
VANCOUVER, B. C., CANADA, *March Sixteenth, 1912.*

I, David F. Wilber, Consul General of the United States at Vancouver, B. C., Canada, hereby certify that the annexed papers, being Depositions of William Robert Stanton and George Frederick Russell Greenwood proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of breaking and entering the garage of Thomas John Trapp, and stealing therefrom one rug and one automobile alleged to have been committed in New Westminster, B. C., Can., are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this Sixteenth day of March, 1912.

[SEAL.]

DAVID F. WILBER,  
*Consul General of the United States of America.*

(Stamp.)

Fee \$2.00 U. S. Gold, equal to \$2.00 local currency, paid by affixing stamp to copy of this document.

236 CANADA.

*Province of British Columbia,  
County of Vancouver:*

REX

vs.

JOHN McNAMARA.

The Deposition of William Robert Stanton, of the City of New Westminster, in the District of New Westminster, in the Province of British Columbia, taken before the undersigned, a Justice of the Peace in and for the Province of British Columbia, this sixteenth day of March, in the year of our Lord one thousand nine hundred and twelve, at the City of New Westminster.

The deponent, William Robert Stanton, on his oath, says as follows:

In addition to the facts stated in my Deposition taken at Vancouver before E. J. Clark, Esquire, a Justice of the Peace in and for the Province of British Columbia, for use on the extradition proceedings against John McNamara charged with burglarising the Bank of Montreal at New Westminster on September 15th, 1911, I depose as follows: The second occasion of my seeing the said John McNamara in New Westminster referred to in my said deposition was not earlier than the 12th day of September, 1911. I am not sure whether it was on the 12th or 13th of September, 1911, that I last saw the said John McNamara at New Westminster, but it was on one or other of those days.

W. R. STANTON.

Subscribed and sworn before me this 16th day of March, 1912.

T. S. ANNANDALE, J. P.

The deposition of William Robert Stanton written on this sheet of paper to which my signature is annexed was taken and signed by said William Robert Stanton in my presence.

237 In witness whereof I have signed my name.

T. S. ANNANDALE,  
*A Justice of the Peace in and for the  
Province of British Columbia.*

238 CANADA,

*Province of British Columbia,  
County of Vancouver:*

REX

vs.

JOHN MCNAMARA.

The Deposition of George Frederick Russell Greenwood, of West Burnaby, in the Province of British Columbia, taken before the undersigned, a Justice of the Peace for the said Province of British Columbia, this sixteenth day of March, in the year of our Lord One thousand nine hundred and twelve, at Vancouver.

The deponent, George Frederick Russell Greenwood, on his oath says as follows:

I live at Central Park, Westminster Road. During the month of September, 1911, I delivered the Daily News Advertiser every day except Monday to persons living on the Westminster Road between Patterson and Royal Oak. Royal Oak is west of New Westminster and Patterson is west of Royal Oak on said Westminster Road between New Westminster and Vancouver. Delivering these papers took me from 6 o'clock until half past 8 o'clock every morning. On the morning of the 15th of September 1911 I was delivering my papers as usual when somewhere between 7 o'clock and 8 o'clock I saw an automobile with five men in it at Wilson Road in Burnaby where the said Wilson Road joins the Westminster Road, Westminster Road being the main road between Westminster and Vancouver. The automobile was black with grey lining and had no top and no wind shields and no number for I look- to see if it had a number. The auto was at a stand-still when I first saw it and remained so for about fifteen minutes until I came up to it, about which time they managed to start it. There were five men altogether with the auto, one was down cranking it while the other four remained in the auto. The man who was driving

239 was a very big man wearing a fawn coloured raincoat. I positively identify him as the man whose photograph is attached to this my deposition as Exhibit "A" and who I am told is John McNamara, who is now under arrest in New York charged with burglary. Of the three men in the back seat of the auto, the one who was sitting nearest to me was the man shown in the photograph marked Exhibit "B" to this my deposition and who I am told is Charles Dean now under arrest in Los Angeles charged with burglary. I positively identify this man as Charles Dean. When I came up to the auto I was about 15 feet away from it and stood and watched them while the auto was being cranked. As soon as the auto was working again it went away towards Vancouver. This happened between 7 o'clock and eight o'clock in the morning as I got home about half past eight o'clock and was at school by nine o'clock. That same evening I read in the papers about the robbery in the Bank of Montreal at New Westminster and heard that the



Chinese janitor at the Bank was held up by some large man. I immediately thought of the very big man who had been driving the auto that morning.

GEORGE FREDERICK.  
RUSSELL GREENWOOD.

Subscribed and sworn before me this sixteenth day of March, 1912.

F. W. HARTLY,  
*A Justice of the Peace in and for the Province  
of British Columbia, Canada.*

The deposition of George Frederick Russell Greenwood written on this and the one preceding sheet of paper to which my signature is attached was taken in my presence and signed by the same George Frederick Russell Greenwood.

In witness whereof I have signed my name:

F. W. HARTLY,  
*A Justice of the Peace in and for the Province  
of British Columbia, Canada.*

240 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE,  
VANCOUVER, B. C., CANADA,  
*February Seventeenth, 1912.*

I, David F. Wilber, Consul General of the United States at Vancouver, B. C., Canada, hereby certify that the annexed papers being the depositions of Mah Hing, Wong Po Tuck, Sing One, George Joseph August Lavery, Ole Steen, John Albert Standish, William H. G. Phipps and Walter Halliday Cotton—proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of breaking and entering the premises of the Bank of Montreal and stealing therefrom \$271,000 alleged to have been committed in New Westminster, B. C., Canada, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause my seal of office to be affixed this seventeenth day of February, 1912.

[SEAL.]

DAVID F. WILBER,  
*Consul General of the United States of America.*

Fee \$2.00 U. S. gold, equal to \$2.00 Local currency, paid by affixing stamp to this document.

241     DOMINION OF CANADA,  
           *Province of British Columbia,*  
           *District of New Westminster;*

REX

vs.

JOHN MCNAMARA.

The deposition of William H. G. Phipps, of the City of New Westminster, in the Province of British Columbia, taken before the undersigned, a justice of the Peace for the said Province of British Columbia, this seventeenth day of February, in the year of our Lord one thousand nine hundred and twelve, at New Westminster.

The deponent, William H. G. Phipps, on his oath says as follows:

I am at present Accountant of the Bank of Montreal, City of New Westminster, and held such position throughout the month of September, 1911. Part of my duties as accountant at the said Bank is to look after the monies contained in the said bank and to see that the safe is properly closed after the monies are deposited therein, the time lock set and the combination turned off after the close of work in the evenings. On the afternoon of the 14th day of September, 1911, between the hours of four and five o'clock, I closed the safe of the said bank in the above described manner. After such closing the said safe could not be opened by myself or any other person excepting by force, until the following morning at 8:30 o'clock, on account of the time lock. About a quarter to six on the morning of September 15th, 1911, I was notified in my room at the Russell Hotel, in the City of New Westminster, that I was wanted down at the bank immediately. On my arrival at the said bank I found that the wall of the vault in the said bank had been tunnelled and said safe blown open by some explosive. Part of the money and gold which had been, to my personal knowledge, in the safe of the said bank when I closed said safe on the afternoon of the 14th of

September, 1911, had been abstracted from said safe between  
 242     the hours of 6 p. m. on the 14th day of September, 1911, when I left the office of the said bank, and 6 a. m. of the 15th day of September, 1911. I immediately made an examination and inventory to see what had been taken and found \$271,721 had been taken from the safe in the said bank of Montreal between the hours above mentioned. The numbers of many of the Bank notes contained in the said safe, and which had been abstracted, were known to me, a record of same having been kept.

In the latter part of October 1911, or the early part of November 1911, one Bozyk was arrested in the City of Vancouver in connection with the circulation of Bank of Montreal five dollar Bank notes, as to the possession of which he was not able to give satisfactory account. I was told that Bozyk's room was searched and that there were found in said room \$1035.00 in five dollar bills of the Bank of Montreal Series "D". I afterwards asked Bozyk how he

came to have these bills in his possession and he informed me that he received them from George Lavery who had found them under the east end of the Carnarvon Street Bridge in the City of New Westminster on the morning of September 15th, 1911. I positively identify these bills which were found in Bozyk's possession by the numbers on them as having been in the safe of the Bank of Montreal, New Westminster, when I closed it on the afternoon of September 14th, 1911, and which were found to be missing on the morning of the 15th of September 1911.

Subsequently, on the afternoon of the 2nd of November, 1911, I saw and took into my possession the gold and bills that were found (by Ole Steen and the gang with which he was working) under the sidewalk on 4th Street between Carnarvon and Victoria Streets, near Dr. Walker's residence. After we had gathered this money together

and carried it to the Bank of Montreal, New Westminster, I counted it and found it to contain \$24,460.00. Of this amount \$5000.00 was in new five dollar Bank of Montreal notes, Series "A" numbered 814,001 to 815,000 inclusive, and \$5000.00 was in new five dollar Bank of Montreal notes Series "B", numbered 827,001 to 828,000 inclusive, \$10,000.00 was in new ten dollar Bank of Montreal notes, Series "D", numbered 534,001 to 535,000 inclusive, and \$4460.00 was in five, ten and twenty dollar American gold pieces. The above mentioned \$20,000.00 in Bank of Montreal notes I positively identify by the numbers on them as part of the money which I had locked in the safe in the Bank of Montreal, New Westminster on the afternoon of September 14th, 1911 and which were found to be missing on the morning of the 15th of September, 1911.

Subsequently on the morning of February 13th, 1912, there was brought to my office in the said Bank of Montreal in the city of New Westminster a further sum of \$3865.00. Of this amount \$3730.00 was in Bank of Montreal notes, Series "A" and \$135.00 was in American gold pieces. All the above mentioned bills were afterwards identified to me as having been found in the grass near a stump in Tipperrary Park which is bounded by 4th Street on the east, Queens Avenue on the north, 6th street on the West and Royal Avenue on the south, in the City of New Westminster by Mah Hing, Sing One and Wong Po Tuck three Chinese boys, on the morning of February 6th, 1912, and I positively identify these bills by their numbers as being part of the money which I had locked in the safe of the said Bank of Montreal in the City of New Westminster on the afternoon of September 14th, 1911 and which I found were missing on the morning of September 15th, 1911.

WILLIAM H. G. PHIPPS.

Subscribed and sworn before me this seventh day of February, 1912.

T. S. ANNANDALE, J. P.

The deposition of William H. G. Phipps on this and the preceding two sheets of paper to which my signature is attached  
 244 was taken in my presence and signed by the said William H. G. Phipps.

In witness whereof I have signed my name.

T. S. ANNADALE,

*A Justice of the Peace for the  
 Province of British Columbia.*

245 DOMINION OF CANADA,  
*Province of British Columbia,  
 District of New Westminster;*

REX

vs.

JOHN MCNAMARA.

I, Walter Halliday Cotton, of the City of New Westminster, in the Province of British Columbia, make oath and say:

1. That I am a Civil Engineer and reside at the City of New Westminster, and know said City of New Westminster well.

2. Now produced and shown to me and marked Exhibits A, B, and C, to this my affidavit, are three facsimile plans purporting to be plans of the City of New Westminster.

3. I have carefully examined said facsimile plans and have observed no mistakes therein, and believe said plans accurately to represent the streets and general arrangement of the said City according to the scale shown on said plans.

4. The lines and measurements shown in red ink on said plans were placed thereon by me after I had satisfied myself of their correctness by chaining out said measurements. The said measurements commence at the Bank of Montreal on Columbia Street in said city (marked "1" on the margin of said plans) and run thence north and east 677 feet along Church street and Carnarvon street to the point under the Carnarvon street bridge where the money was found (marked "2" in the margin of said plans) thence 235 feet east and north along Carnarvon street and 4th street to the point in the sidewalk where the money was found (marked "3" in the margin of said plans), thence north along 4th street 1017 feet to point on 4th street 15 feet east of point in Tipperrary Park where money was found (marked "6" in the margin of said plans) thence from said point in Tipperrary Park (marked "6" in margin of said plans) south and west 509 feet to Trapp's garage (marked "4" on margin of said plans,) thence westerly and easterly respectively 356 feet to the Y. M. C. A. (marked "5" on the margin of said plans) and 178 feet to the corner of Royal Avenue and 4th street. I personally measured said distances and know that they are correct.

6. Now produced and shown to me and marked Exhibit D to this my affidavit, is plan made by me showing on a larger scale, viz 100 feet to the inch the measurements made in red ink in Ex-

hibit- A. B. and C., all of which measurements I chained out myself and can speak positively as to their correctness.

WALTER HALLIDAY COTTON.

Sworn before me this seventeenth day of February, 1912.

T. S. ANNANDALE,  
*A Justice of the Peace for the  
Province of British Columbia.*

247 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

AMERICAN CONSULAR SERVICE.  
VANCOUVER, B. C., CANADA,  
*March Nineteenth, 1912.*

I, David F. Wilber, Consul General of the United States of America at Vancouver, British Columbia, Dominion of Canada, hereby certify that the annexed papers, being depositions of Frederick Ernest Stephens, Ethel Stebbings and Samuel Fletcher Bacon proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of breaking and entering the garage of Thomas John Trapp and stealing therefrom one rug and one automobile, alleged to have been committed in New Westminster, British Columbia, Dominion of Canada, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of The Dominion of Canada, as required by the Act of Congress of August 3, 1882.

In Witness Whereof I hereunto sign my name and cause my seal of office to be affixed this nineteenth day of March, 1912.

(Stamp.)

Fee \$2.00 paid by affixing a stamp to this document.

[SEAL.]

DAVID F. WILBER,  
*Consul General of the United States of  
America at Vancouver, B. C., Canada.*

248 CANADA,

*Province of British Columbia,**County of Vancouver;**County of Vancouver;*

REX

vs.

McNAMARA.

The deposition of Frederick Ernest Stephens, Ethel Stebbings and Samuel Fletcher Bacon, all of the City of Vancouver, in the County of Vancouver, in the Province of British Columbia, taken before the undersigned, a Justice of the Peace for the said County of Vancouver, this Nineteenth day of March, in the year of our Lord One thousand nine hundred and twelve, at the said City of Vancouver.

The deponent, Frederick Ernest Stephens, on his oath says as follows:

I am a Butcher in the employ of P. Burns and Company, Butchers of Vancouver, at their branch store at 2427 Granville Street, Vancouver, B. C. and was in their employ at the said branch store the whole of the month of September, 1911. There are five wooden blocks behind the counter in the said branch store at which the meats sold to customers are chopped and prepared for delivery. Previous to the 8th day of September, 1911 I worked at the Second Block from the Street entrance behind the said counter, but on the 8th day of said month I was moved to the Fourth block from the said Street Entrance. This said fourth block is where the telephone orders are received and put up and is called the Order Block. Sometime after I was moved at said block a man who I am told was John McNamara now charged at the City of New York with the crime of burglary and whose photograph is hereby attached and marked Exhibit "A" to this my deposition came into the said branch store to buy some meat, having with him two fierce looking Bull

249 Dogs, one white and one black. I positively identify said photograph as that of the said man. Although it was not my duty to serve him, as I was supposed to attend to telephone orders I went around in front of the counter and took and filled his order. I remember this distinctly, and that it was on or after the 8th day of September, 1911 that I was put on the said Fourth Block to work there.

FREDERICK ERNEST STEPHENS.

Subscribed and Sworn before me this 19th day of March, 1912.

[SEAL.]

THOMAS PROCTOR,

*Justice of the Peace for British Columbia, Canada.*

The deponent, Ethel Stebbings, on her oath says as follows:

I lived with my parents at 1678 Broadway in the City of Vancouver, during June, July, August, September and until the 29th

of October, 1911, when we moved away to where we live at present. Namely, 1773 Fifth Avenue, West Vancouver. During the time we were having our school holidays at Vancouver a family moved into the house next to us which house belonged to Mr. Burton, and lived there for sometime. There were two girls in the family and I used to play, from the time they moved into the house till the time they left it, with the youngest who was about twelve years of age, about my own age, and she told me her name was Sylvia Dean. The family consisted of Sylvia Dean's mother, Mrs. Dean the two girls and two men. The picture marked Exhibit "A" to this my deposition is the picture of one of the men who I was told by Sylvia was her father Mr. Dean. I thought at first that Mr.

Dean was her brother and asked her whether he was not her  
 250 brother and if the other man who lived in the house was her father. She said Mr. Dean was her father and that the other man was only a friend of the family and his name was McNamara. This picture attached to this my deposition and marked Exhibit "B" I positively identify as the picture of the man who lived with the Deans and whose name Sylvia told me was McNamara. The family lived in the house until the end of the month of September, 1911, I had been back at School for some weeks before the Deans moved away, as Sylvia Dean, who didn't go to School, used to come to meet me as I came home from school. I went back to school when school opened after the Summer Holidays at the beginning of September 1911.

ETHEL MAY STEBBINGS.

Subscribed and Sworn before me this 19th — March 1912.

[SEAL.]

THOMAS PROCTOR,

*Justice of the Peace for British Columbia, Canada.*

The deponent, Samuel Fletcher Bacon on his oath says as follows:  
 I am a Contractor and Builder and live in the City of Vancouver, 1642 Broadway West. From the 16th day of August, 1911 to the 27th day of September, 1911 a period of exactly six weeks my house was quarantined. My little daughter had Scarlet Fever and the Health Department quarantined the house. During that six weeks I slept in the yard of my house in a tent. I used to go down Pine Street to my Sister's to get my meals. Mr. Burton's house, 1697 Broadway, stands on the corner of Broadway and Pine street, and in going to my sister's house and in coming therefrom to my house I would necessarily pass this house of Mr. Burton's. On the 13th  
 251 day of September, 1911, my wife, who had been nursing my daughter was taken down with Scarlet Fever and was removed to the Hospital. The night after she was removed to the Hospital a very powerful and ferocious looking white Bull Dog came into my *my* yard and disturbed the tent ropes. The same dog came into my yard several times after that. Between then the said 13th day of September, 1911 and the 23rd day of September, 1911, I saw the said dog on the back porch of Mr. Burton's house Number 1697 Broadway, at least half a dozen times on different days

on all these occasions the said dog was with a big and powerful looking man whose picture is attached to this my deposition and marked Exhibit "A" thereto, and who I am told is John McNamara now under arrest in New York charged with the crime of burglary. On one of these occasions the said man was feeding the said white Bull Dog, and also the black Bull Dog. The Black Bull Dog acted in a very greedy way and was keeping the white dog from the dish and the said man took hold of the black Bull Dog and drew him away from the platter so as to let the white bull dog get his share of the food. The way in which I know that the last time I saw the said man was not later than the 23rd of September, 1911, is that from the 23rd day of September, 1911, to the 27th day of September, 1911, I was busy getting the quarantine raised from my house and did not get home until dark. The quarantine was raised on the 27th day of September, 1911, after which I had no further occasion to take my meals away from home and so did not go down Pine Street, and did not again see the said man.

SAMUEL F. BACON.

Subscribed and sworn to before me this 19th day of March 1912.

[SEAL.]

THOMAS PROCTOR,

*Justice of the Peace for British Columbia, Canada.*

252 The Depositions of Frederick Ernest Stephens, Ethel Stebbings and Samuel Fletcher Bacon, written on the several sheets of paper to the last of which my signature is annexed, were taken and signed by the said Frederick Ernest Stephens, Ethel Stebbings and Samuel Fletcher Bacon, respectively in my presence.

In witness whereof I have signed my name and affixed my Seal.

[SEAL.]

THOMAS PROCTOR,

*Justice of the Peace for British Columbia, Canada.*

Vancouver, B. C., March 19, 1912.

253 In the Matter of the Application for the Extradition of JOHN MCNAMARA under the Treaties between the United States and Great Britain on the Charge of Burglarizing the Garage of Thomas J. Trapp.

After a careful examination and consideration of the testimony and briefs submitted in this matter, I am of the opinion that a case of probable cause has been made out against the accused on the charge of burglarizing the garage of Thomas J. Trapp at New Westminster in British Columbia in the Dominion of Canada, and the accused is hereby committed to the custody of the U. S. Marshal, for the Southern District of New York, until a warrant for his extradition shall issue, on said charge by the proper authorities at Washington, or he shall be otherwise dealt with according to the law.

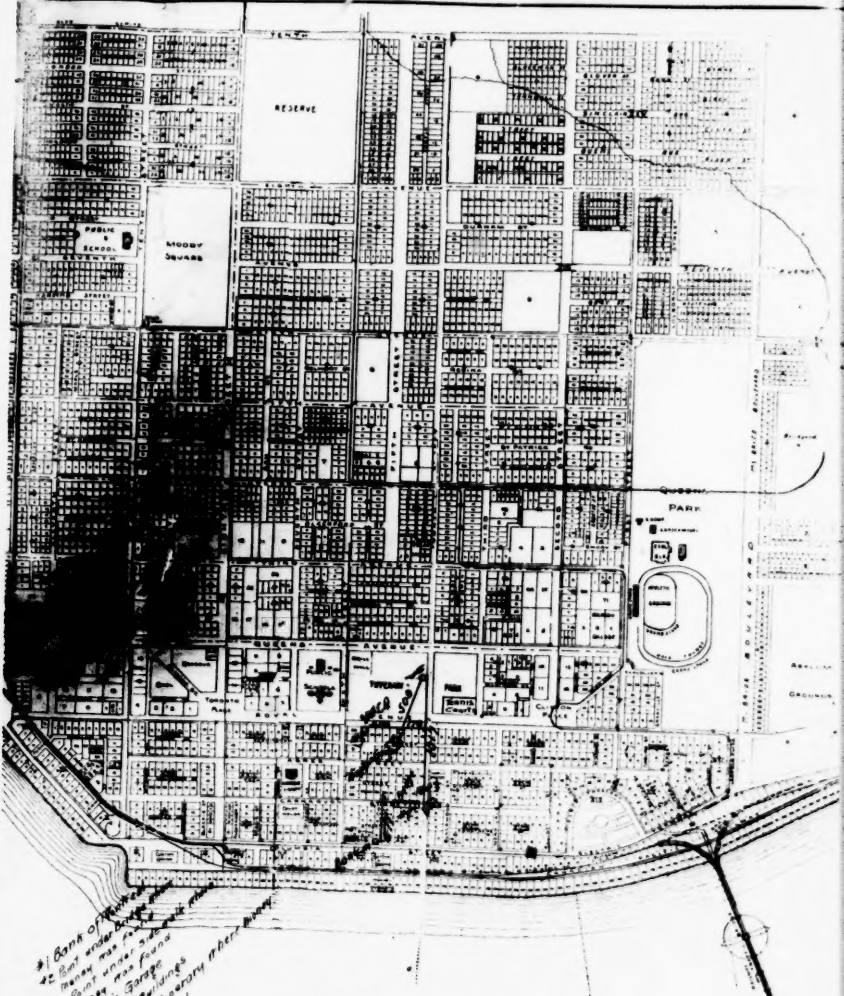
New York, April 23, 1912.

JOHN A. SHIELDS,

*U. S. Commissioner for the  
Southern District of New York.*



1.10  
23a



- #1 Bank of Montreal
- #2 Bank under bridge
- #3 Bank under bridge
- #4 Bank under bridge
- #5 Bank under bridge
- #6 Bank under bridge

Exhibit A attached to  
affidavit of L.H. Cohen  
dated Feb 17, 1912.



Tipperary Park  
Rosed

Royal Orange

Bar

Tomb of General

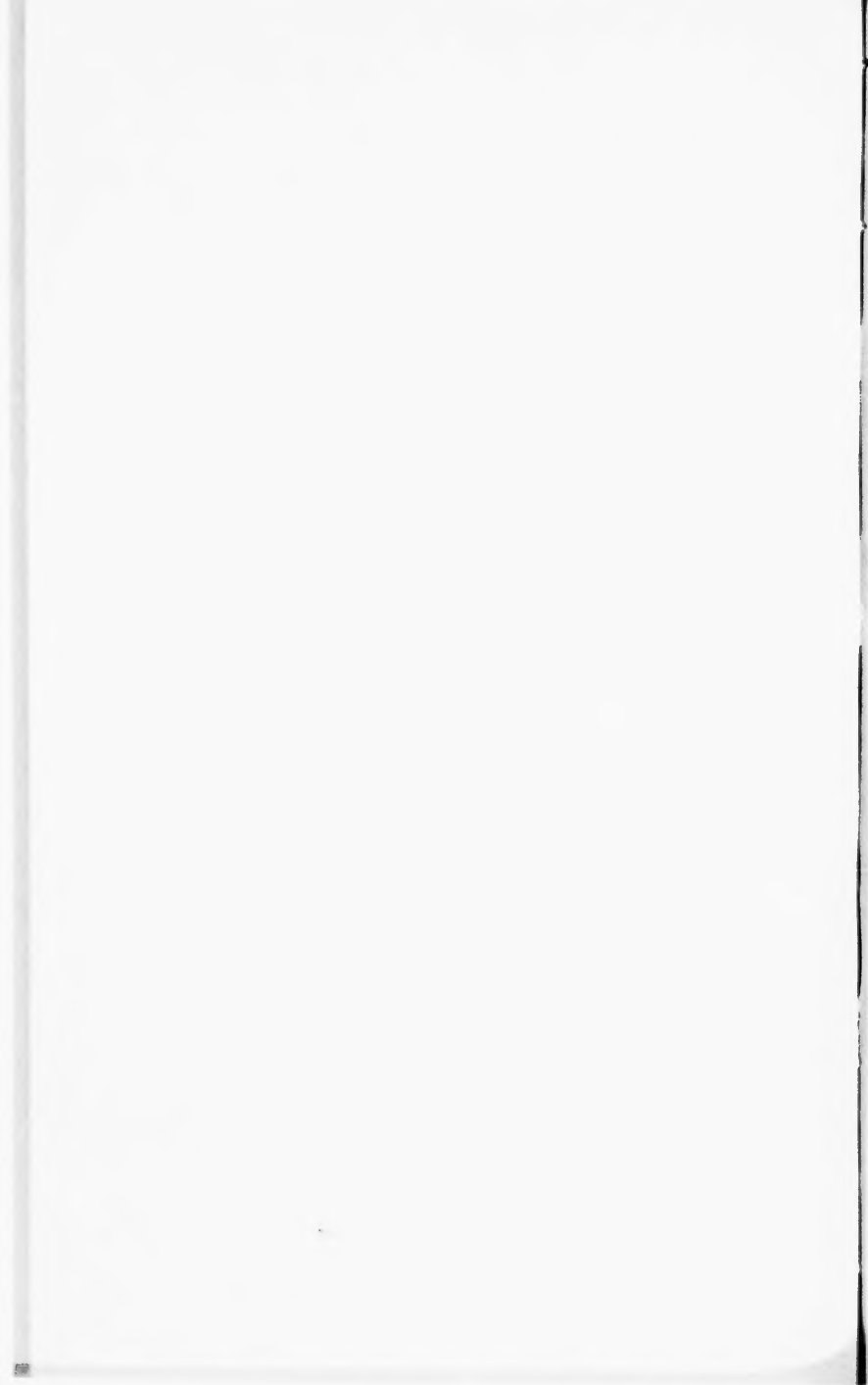
- 41 Bank of Newtown
- 42 Pool under bridge above...
- 43 Pool under bridge above...
- 44 Mr. Trepp's Quagga
- 45 M.C. & Co. Ltd.
- 46 Road in Tipperary Park above...

Captain St.

Bridge

Columbia St.

Bennett St.



Fort Lee, N. J.

Sept 14 1911

M

To H. F. Schilling, Dr.

NEWSDEALER

Fort Lee, N. J.

**THE NEW YORK HERALD** America's Leading Newspaper  
"All the News From Everywhere"  
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Three  $\frac{00}{100}$   $\frac{37}{100}$  for automobile  
hired to Mr The Namara  
Ot F Schilling

Spk 2  
may 4/12

TEL. BRYANT 2100

NOTARY PUBLIC

Spk 2  
may 4/12

W. H. D. MARR  
PUBLIC STENOGRAPHER  
HOTEL ASTOR

OFFICE HOURS:  
9 A. M. TO 10 P. M.  
SUNDAYS & HOLIDAYS:  
10 A. M. TO 7 P. M.

TIMES SQUARE  
NEW YORK









254 Supreme Court of the United States of America.

UNITED STATES OF AMERICA ex Rel. JOHN McNAMARA, Appellant,  
against  
WILLIAM HENKEL, United States Marshal, etc.

*Stipulation.*

It is hereby stipulated and agreed by and between the attorneys for the appellant and His Britannic Majesty's Consul General at the Port of New York that the photographs of Exhibit A, attached to the affidavit of W. H. Cotton, verified February 17, 1912. Exhibit B, attached to said affidavit; Defendant's exhibits 2, 3 and 4 of March 14, 1912, may be bound in the record on appeal herein, and may be used with the same force and effect as if the original exhibits were produced upon the argument.

It is further stipulated and agreed that one photograph of the relator appellant, John McNamara, may be used in the record on appeal in the place and stead of all the photographs of the said relator appellant attached as exhibits to the depositions of the witnesses for the British Government.

It is further stipulated and agreed that no exhibits except those herein enumerated need be photographed and bound in the said record on appeal and that all the original exhibits may be produced upon the argument of the appeal herein and used with the same force and effect as if contained in the record on appeal.

Dated, New York, N. Y. June 10, 1912.

GEO. GORDON BAILEY,

*Attorney for Relator Appellant.*

CHAS. FOX,

*Attorney for His Britannic Majesty's Consul General  
at the Port of New York, Appellee.*

(Here follows diagrams marked pp. 254 a, b, c, d, and e.)

UNITED STATES DISTRICT COURT,  
*Southern District of New York:*

In the Matter of the Application for the Extradition of JOHN MC-NAMARA under the Treaties between the United States and Great Britain.

Charles Fox, for the Demanding Government.  
 George Gordon Battle, for the Relator.

HAND, *District Judge:*

It is hardly worth while at this time to go over the authorities upon the scope of the review on habeas corpus issued upon a commissioner's warrant in extradition. *Elias vs. Ramirez*, 215 U. S. 398. *Re Henrich*, 5 Blatch 414, is not now the law, and Judge Blatchford probably meant to overrule it in *Re Stupp*, 12 Blatch. 501. Anyway it ought not now to be cited for it confuses well-settled law.

If there was any competent testimony of all the elements of the crime of burglary as defined by the law of New York this writ is useless to the relator. Those elements are breaking and entering a building with intent to commit a crime, or committing a crime in a building and breaking out. Penal Laws Sec. 404. Breaking includes entering through any surreptitious opening, as a pipe or chimney. Here the facts prove beyond any reasonable question that somebody about five or six in the morning had entered Trapp's garage either by raising the window or climbing in through the garage pit at the bottom. This is so because he could not enter in 256 any other way, and because Wise heard someone in there at that time. Either entry is a "breaking" under the law of New York. Did the person who so broke and entered intend to commit a crime? The time and method of entry coupled with the subsequent rolling out of the motor-car, precludes any other reasonable interpretation. The only other conceivable supposition, i. e., that the entry was innocent and the car was stolen later, nevertheless includes the commission of larceny and a subsequent breaking out, which is equally a burglary. It is urged that the entrant may not have meant to steal the car, but only to take it out for a ride without the owner's consent. That, however, had been made larceny in the State of New York at the time in question, Penal Law Sec. 1293, *a*, even if it were not such at common law without enactment. Therefore, to enter a building with that intent was to commit burglary under the law of New York.

The only other question is whether the relator was connected with the crime with enough certainty. There was proof,—I may not consider how good,—that he was trying to make the car start shortly after it had been taken out. He was then in the company of others. Only two reasonable interpretations exist, either he was concerned

with taking it out originally, or he was innocently helping those to start it, who had taken it out. He might have been merely passing by at the time and been asked to "crank" the machine, if he could. Now, fresh possession in such cases justifies the inference that the possessor is the offender, under some of the oldest rules of the criminal law, *Wilson vs. U. S.*, 162 U. S. 613, *Wigmore Sec.* 2513. At best, the relator must concede that the four together at that time had apparent possession, because, if there is to be speculation as to whether only one among them had it, the guess must choose the relator. If, however, they were acting in concert then all were  
 257 equally principals, and the proof is enough. If they were not, and if the relator's connection with them was contrary to appearances, in fact casual and innocent, it rested with him to show it. His conduct was certainly enough to justify the inference that he was acting in general concert with them; it is not necessary that the evidence should admit of no other inference. If the relator had feared that his conduct would be so interpreted, he was bound at his peril to put in some proof. The case is quite as strong as many cases of conspiracy.

The suggestion that the extradition is in fact designed to enable the demanding government to try the relator upon another charge, I cannot consider. Even if it were true, it would be a matter for the State Department, not for a court.

Writ dismissed and relator remanded.

L. H., D. J.

(Endorsed): U. S. District Court, S. D. N. Y., Filed May 7, 1912.

258 *Order Dismissing Writs.*

At a Stated Term of the District Court of the United States of America for the Southern District of New York. Held at the U. S. Court and Post Office Building, in the City of New York, on the 9th Day of May, in the Year One Thousand Nine Hundred and Twelve.

Present: The Honorable Learned Hand, Judge.

UNITED STATES OF AMERICA ex Rel. JOHN McNAMARA  
 vs.

WILLIAM HENKEL, Marshal.

The above matter having come on to be heard upon the returns of writs of habeas corpus and certiorari and after hearing George Gordon Battle, Esq., of counsel for the relator and Abram J. Rose, Esq., and Charles Fox, Esq., in opposition; on motion of Mr. Charles Fox, attorney for the demanding government, it is

Ordered that the said writs of habeas corpus and certiorari be and the same hereby are dismissed and the relator is remanded to the

custody of the United States Marshal for the Southern District of New York.

LEARNED HAND, *D. J.*

(Endorsed:;) U. S. District Court, S. D. of N. Y. Filed May 10, 1912.

259 District Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of JOHN MC-NAMARA under the Treaties between the United States and Great Britain.

*Petition for Appeal.*

Comes now John McNamara, the petitioner herein, conceiving himself aggrieved by the order and decree heretofore made and entered by this Court dismissing the writs of habeas corpus and certiorari and remanding the petitioner to the custody of William Henkel, United States Marshal, and having filed with the Clerk of this Court his assignments of error and desiring to appeal from said order or decree to the Supreme Court of the United States, prays this Court to allow an appeal to the Supreme Court of the United States from said decree, and that a certified transcript of the record upon the said decree so made be transmitted to said Court.

Dated, New York, N. Y., May 13, 1912.

O'GORMAN, BATTLE & MARSHALL,

*Attorneys for Petitioner.*

37 Wall Street, Borough of Manhattan, New York, N. Y.

260 District Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of JOHN MC-NAMARA under the Treaties Between the United States and Great Britain.

*Order.*

The above named John McNamara, the petitioner herein, having presented his petition for leave to appeal to the Supreme Court of the United States from the decree entered herein on the 10th day of May, 1912 dismissing the writs of habeas corpus and certiorari and remanding the petitioner to the custody of the United States Marshal for the Southern District of New York:

Now, on motion of O'Gorman, Battle & Marshall, attorneys for said petitioner, it is

Ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, dismissing the writs of habeas corpus and certiorari and remanding the petitioner

to the custody of the United States Marshal for the Southern District of New York, be, and the same hereby is, allowed, and that a certified transcript of the record of all proceedings herein, as well as of the return of the said William Henkel, United States Marshal, to the said writ of habeas corpus and the return of the said John A. Shields, United States Commissioner, to the said writ of certiorari, duly authenticated, be forthwith transmitted to the Supreme Court  
261 of the United States, and it is further

Ordered that the bond on appeal be fixed at the sum of Two hundred and fifty dollars (\$250.), as bond for costs and damages on appeal, and that the supersedeas upon the order or decree in said appeal mentioned be and the same hereby is granted.

Dated, New York, May 13, 1912.

LEARNED HAND, U. S. D. J.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 13, 1912.

262 District Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of JOHN McNAMARA under the Treaties Between the United States and Great Britain.

*Assignments of Error.*

And now comes the petitioner, John McNamara, by his attorneys, O'Gorman, Battle & Marshall, in connection with his petition of appeal from the order entered herein on the 10th day of May, 1912, dismissing the writs of habeas corpus and certiorari herein, and makes and files the following assignments of error. The Court erred.

First. In dismissing the writs of habeas corpus and certiorari and remanding the petitioner;

Second. In holding that the petitioner is lawfully held in custody;

Third. In holding that the United States Commissioner possessed the power and jurisdiction to issue the warrant of commitment herein;

Fourth. In holding that the complaint herein conferred jurisdiction on the United States Commissioner to issue a warrant of arrest in said proceedings;

Fifth. In holding that there is competent evidence that the petitioner committed the crime or crimes charged in the complaint or either or any of said crimes;

Sixth. In holding that there is competent evidence showing that your petitioner is the person charged with the commission of said crime or crimes;

263 Seventh. In holding that depositions unauthenticated as required by law were properly admitted in evidence to establish the identity of the accused and the commission of the said crime or crimes;

Eighth. In holding that the petitioner is lawfully held, imprisoned and restrained of his liberty by the United States Marshal for the Southern District of New York, and in holding that the petitioner is not entitled to be discharged from custody;

Ninth. In holding that the petitioner is not deprived of his liberty without due process of law.

Wherefore, your petitioner prays that the order dismissing the said writs of habeas corpus and certiorari and remanding your petitioner to the custody of William Henkel, United States Marshal for the Southern District of New York be reviewed, and that your petitioner be discharged from custody.

JOHN MCNAMARA,  
By O'GORMAN, BATTLE & MARSHALL,  
*His Attorneys.*  
GEORGE GORDON BATTLE.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed May 13, 1912.

264

*Bond for Costs.*

District Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of JOHN MCNAMARA under the Treaties Between the United States and Great Britain.

UNITED STATES OF AMERICA ex Rel. JOHN MCNAMARA, Appellant,  
against  
WILLIAM HENKEL, United States Marshal for the Southern District of New York, Respondent.

Know all men by these presents, That We John McNamara, as principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 49 Cedar street, in the City of New York, as surety, are held and firmly bound unto the United States of America in the sum of two hundred and fifty (\$250.00) dollars, lawful money of the United States of America, to which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 14th day of May, 1912.

Whereas, lately to-wit, on the 10th day of May 1912, at the District Court of the United States in and for the Southern District of

New York, in a proceeding therein pending an order was  
265 entered dismissing and discharging a certain writ of Habeas Corpus theretofore allowed upon the application of the above named petitioner and remanding him to the custody of the appellee; and

Whereas the said petitioner has duly obtained an appeal to the Supreme Court of the United States, from the said order,

Now therefore, the condition of this obligation is such that if the above named John McNamara shall prosecute his appeal to effect and shall answer all costs if he fail to make his appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

JOHN McNAMARA.

UNITED STATES FIDELITY AND GUARANTY  
COMPANY.

By WILLIAM H. ESTWICK, *Attorney-in-Fact*.

Attest:

[SEAL.]

S. FRANK HEDGES,

*Attorney-in-Fact*.

Signed, sealed and delivered in the presence of

RAYMOND H. SARFATY.

266 *Affidavit, Acknowledgment, and Justification by the United  
States Fidelity and Guaranty Company.*

STATE OF NEW YORK,

*County of New York, ss:*

Before me personally came William H. Estwick known to me to be the Attorney in Fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of John McNamara as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney in Fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of John McNamara is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney in Fact of said Company; and that he is acquainted with S. Frank Hedges and knows him to be Attorney-in-fact of said Company, and that the signature of said S. Frank Hedges subscribed to said bond is the genuine handwriting of S. Frank Hedges and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars (\$2,000,000.00).

WILLIAM H. ESTWICK.

Sworn to, acknowledged before me, and subscribed in my presence this 14 day of May, 1912.

C. D. MARSAC,

*Notary Public; New York County.*

267 (Endorsed:) Approved as to form and sufficiency May 15, 1912. Learned Hand, U. S. D. J. U. S. District Court, S. D. of N. Y., Filed May 17, 1912.

268 District Court of the United States, Southern District of New York.

In the Matter of the Application for the Extradition of JOHN MC-NAMARA under the Treaties Between the United States and Great Britain.

*Citation.*

The President of the United States to William Henkel, United States Marshal for the Southern District of New York, and Courtenay Walter Bennett, His Britannic Majesty's Consul General at the Port of New York:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the City of Washington, District of Columbia, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein John McNamara is petitioner and in a certain suit or proceeding entitled "In the Matter of the application for the extradition of John McNamara under the treaties between the United States and Great Britain," to show cause, if any there be, why the order and decree in the said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness, Honorable George C. Holt, Judge of the District Court of the United States for the Southern District of New York, this 13 day of May, One thousand, nine hundred and twelve, and the Independence of the United States One hundred and thirty-sixth.

LEARNED HAND, U. S. D. J.

270 [Endorsed:] 4/328. U. S. District Court, Southern District of New York. In the matter of the application for extradition of John McNamara under the treaties between the United States and Great Britain. (Original.) Citation. Battle & Marshall, attorneys for petitioner, No. 37 Wall Street, Borough of Manhattan, New York City. 85¢. U. S. District Court, S. D. of N. Y. Filed May 13, 1912. — M.



271 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

In the Matter of the Application for the Extradition of JOHN MC-NAMARA under the Treaties Between the United States and Great Britain.

I, Thomas Alexander, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled matter.

In Testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 12th day of June, in the year of our Lord one thousand nine hundred and Twelve, and of the Independence of the said United States the one hundred and thirty-sixth.

[Seal District Court of the United States, Southern District of N. Y.]

THOMAS ALEXANDER, *Clerk.*

Clerk's fees for certifying record amounted to \$81.00.

THOMAS ALEXANDER, *Clerk.*

Endorsed on cover: File No. 23,262. S. New York D. C. U. S. Term No. 687. John McNamara, appellant, vs. William Henkel, United States marshal for the southern district of New York, et al. Filed June 19, 1912. File No. 23,262.



FILED.

OCT 28 1912

JAMES H. MCKENNEY,

CLERK.

**Supreme Court of the United States,**

OCTOBER TERM, 1912.

No. 687.

JOHN MCNAMARA,  
Appellant.

*against*

WILLIAM HENKEL, United States  
Marshal for the Southern Dis-  
trict of New York *et al.*,  
Respondents.

*Sirs.*—Please take notice that a motion will be made, for the reasons hereto annexed, before the United States Supreme Court, at a session thereof to be held at the Capitol, in the City of Washington, D. C., on Monday, the 28th day of October, 1912, at twelve o'clock noon, or as soon thereafter as counsel can be heard, for a rule or order advancing this cause and setting it down for hearing and argument on a day to be fixed by the Court.

Dated October 19th, 1912.

Yours, &c.,

CHARLES FOX,  
Attorney for Appellee, H. B. M.  
Consul General, at New York,  
No. 3 Broad Street,  
New York City.

TO SOLICITOR GENERAL OF THE UNITED STATES,  
Representing William Henkel, Appellee.

GEORGE GORDON BATTLE, Esq.,  
Attorney of Record, for Appellant.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 687.

JOHN McNAMARA,

Appellant,

*against*

WILLIAM HENKEL, United States  
 Marshal for the Southern Dis-  
 trict of New York *et al.*,  
 Respondents.

Now comes Courtney Walter Bennett, Esq., His Britannic Majesty's Consul General at the Port of New York, an appellee of record, by Charles Fox, his counsel and moves this Honorable Court, to advance the above-entitled cause upon the calendar and to set the same down for argument for a day certain.

The matter involved herein is an appeal from an order of the District Court of the United States for the Southern District of New York, dismissing writs of *habeas corpus* and *certiorari* and remanding the appellant to the custody of the United States Marshal for the Southern District of New York, in whose custody he now is, awaiting the final determination of this appeal.

The appellant in proceedings instituted in January, 1912, upon a complaint of the Senior Vice Consul of Great Britain at the Port of New York, under the treaty of extradition of 1889, between the United States and Great Britain, charging him with having committed the crime of burglary in New Westminster, British Columbia, in the Dominion of Canada, was apprehended and arraigned before the Commissioner issuing the warrant, he

demand an examination, the same was had and the Commissioner upon the evidence, the appellant having introduced testimony on his own behalf, held the appellant for extradition for the crime charged.

The appellant's assignments of errors are as follows :

*First.*—In dismissing the writs of habeas corpus and certiorari and remanding the petitioner;

*Second.*—In holding that the petitioner is lawfully held in custody;

*Third.*—In holding that the United States Commissioner possessed the power and jurisdiction to issue the warrant of commitment herein ;

*Fourth.*—In holding that the complaint herein conferred jurisdiction on the United States Commissioner to issue a warrant of arrest in said proceedings ;

*Fifth.*—In holding that there is competent evidence that the petitioner committed the crime or crimes charged in the complaint or either or any of said crimes ;

*Sixth.*—In holding that there is competent evidence showing that your petitioner is the person charged with the commission of said crime or crimes ;

*Seventh.*—In holding that depositions unauthenticated as required by law were properly admitted in evidence to establish the identity of the accused and the commission of the said crime or crimes ;

*Eighth.*—In holding that the petitioner is lawfully held, imprisoned and restrained of his liberty by the United States Marshal for the Southern District of New York, and in holding that the petitioner is not entitled to be discharged from custody ;

*Ninth.*—In holding that the petitioner is not deprived of his liberty without due process of law."

That the questions raised by the appellant seem to have been the subject of consideration by this Honorable Court in other cases of extradition, and the contentions of the appellants, similarly situated to the appellant were not sustained.

That the demanding Government, represented by the appellee, is desirous of having the appellant extradited to Canada, for trial, and to that end asks for an early determination of this appeal, that if the appellant was legally held for extradition by the Commissioner he may be sent to Canada as soon as possible.

Respectfully submitted.

CHARLES FOX,  
Attorney for Appellee,  
H. B. M. Consul General at New York,  
No. 3 Broad Street,  
New York City.

7  
NEW YORK  
FILING

NOV 30 1912

JAMES H. McKENNEY

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# Supreme Court of the United States.

OCTOBER TERM, 1912.

No. 687.

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JOHN McNAMARA,

*Appellant,*

*against*

WILLIAM HENKEL, United States Marshal for the Southern  
District of New York, *et al.*,

*Appellees.*

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## BRIEF FOR APPELLANT.

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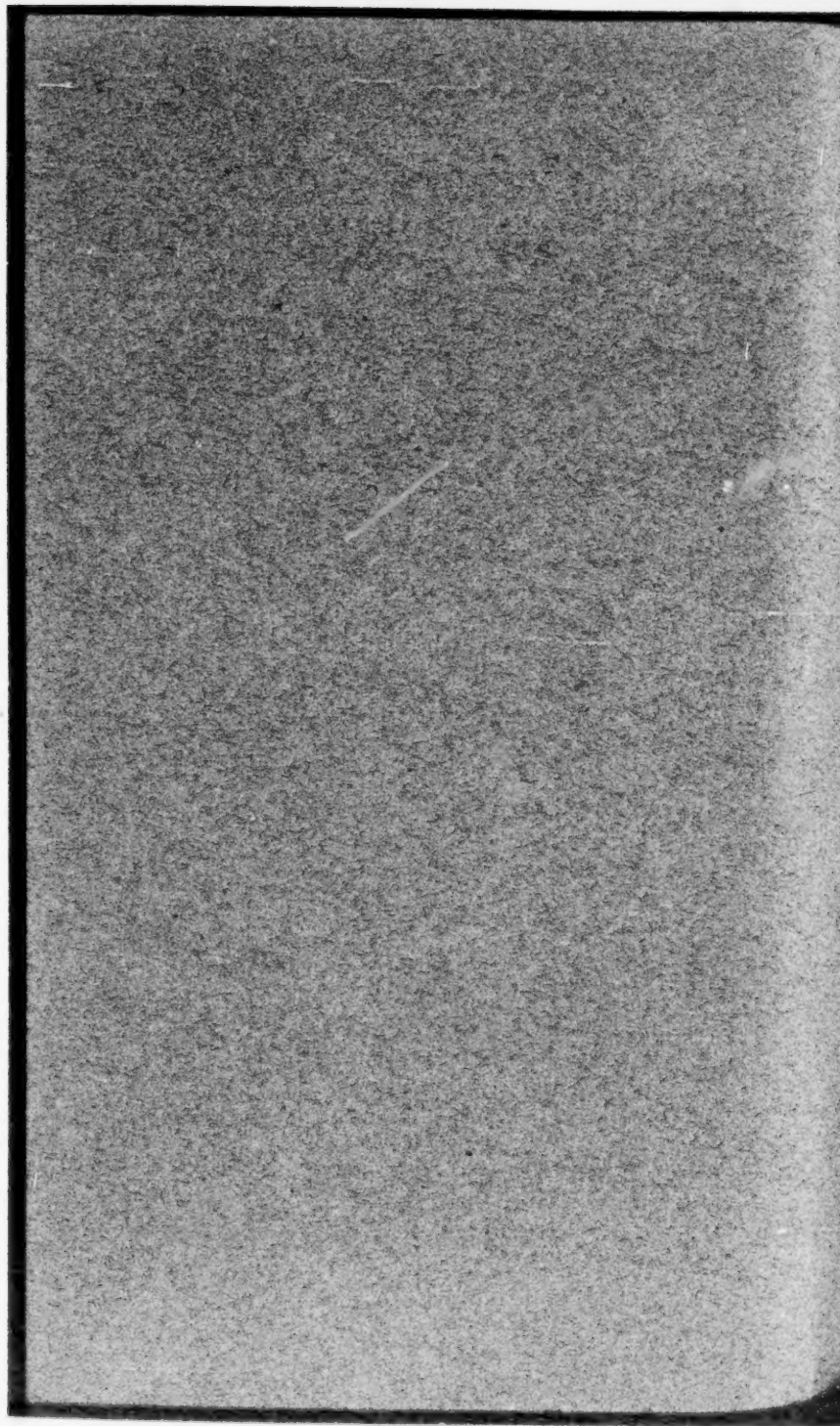
GEORGE GORDON BATTLE,

*Counsel for Appellant.*

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New York:  
Stillman Appellate Printing Co.  
1912.

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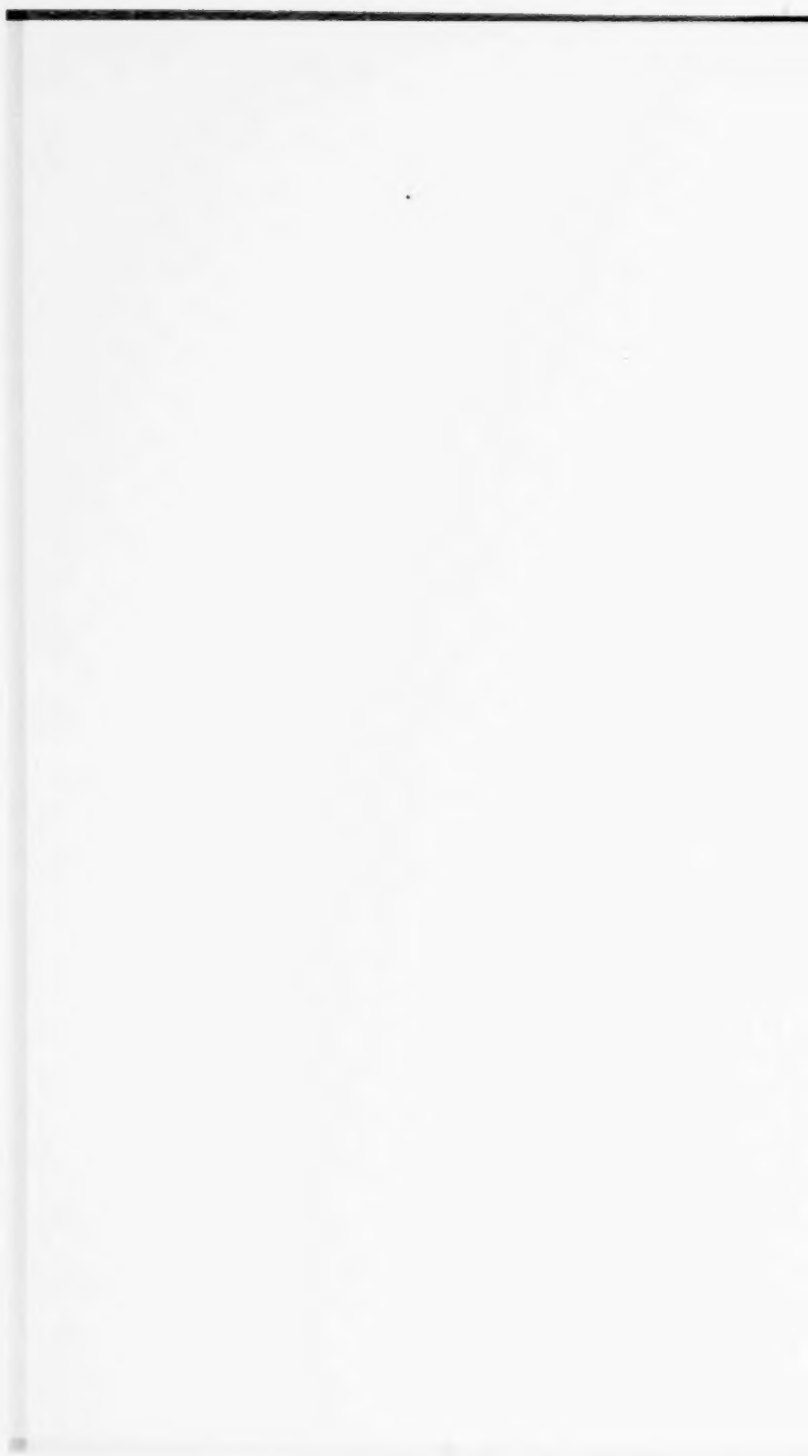


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**Supreme Court of the United States,**

OCTOBER TERM, 1912.

JOHN McNAMARA,  
Appellant,

against

WILLIAM HENKEL, United States  
Marshal for the Southern Dis-  
trict of New York, *et al.*,  
Appellees.

**BRIEF FOR APPELLANT.**

**Statement of the Case.**

This is an appeal from the final order of the United States District Court for the Southern District of New York, entered on the 9th day of May, 1912, dismissing writs of habeas corpus and certiorari sued out by the appellant, and remanding him to the custody of the appellee Henkel under a commitment issued by a United States Commissioner, upon a complaint of the Government of Great Britain demanding the surrender of the appellant under the Extradition Treaty between the United States and the Government of Great Britain.

The circumstances surrounding this proceeding are of such an unusual character that we beg leave to place them before this honorable Court at the outset, so that a clear understanding of the appellant's position may be had.

The appellant, who is a citizen of the United States (record, p. 1), was arrested in the County of New York on the 8th day of January, 1912, upon a warrant issued by a City Magistrate of the City of New York based upon a complaint charging him with bringing stolen property within the State. He was remanded until the 11th day of January, 1912, when he was arraigned, and the proceedings were then dismissed with the consent of the District Attorney of the County of New York (record, p. 3).

Immediately after the conclusion of this proceeding, the appellant was arrested upon a warrant dated the 8th day of January, 1912, issued by United States Commissioner John A. Shields, charging the appellant with the crime of burglary committed on the 15th day of September, 1911, at New Westminster, British Columbia, Canada, in that he feloniously broke into the banking house of the Bank of Montreal in New Westminster and stole and took therefrom property of the said Bank of Montreal (record, pp. 4, 5). The warrant was issued upon an information sworn to upon information and belief by John J. Broderick, British Vice Consul at the Port of New York (record, p. 6).

The appellant was arraigned before United States Commissioner Shields on the 11th day of January, 1912, upon the said warrant, and a plea of not guilty was duly entered. Counsel for the

British Consul and the Bank of Montreal appeared at said hearing, and asked for an adjournment so that they could obtain depositions to offer in support of the application for extradition of this appellant.

Other adjournments were thereafter had for like reason, and hearings were thereafter had until the 20th day of February, 1912, when counsel for the appellant, without submitting any proof in his behalf, moved for a dismissal of the said warrant of arrest upon the said warrant and upon the complaint and upon the minutes of the said proceeding taken before the said Commissioner.

Decision upon the said motion was reserved by the said Commissioner, and before the conclusion of the said hearing appellant was arrested upon a second warrant issued by the said Commissioner on the 29th day of January, 1912.

The proceedings upon the first-mentioned warrant were thereafter opened to admit further depositions offered by the demanding government, and on the 8th day of March, 1912, the said first warrant, charging this appellant with burglary in that he feloniously entered the branch bank of the Bank of Montreal at New Westminster and stole and took therefrom property of the said bank, was dismissed by the said Commissioner upon the ground that the testimony offered on the charge of burglary in breaking into the bank at New Westminster was too vague and unsatisfactory (record, pp. 4, 29).

At the same time the Commissioner rendered his decision upon the first mentioned warrant, he held that the demanding government had made out a

*prima facie* case upon the second warrant (record, p. 29). This second warrant, likewise issued upon an information sworn to by the British Vice Consul upon information and belief, charged that the appellant on the 15th day of September, 1911, in New Westminster, feloniously broke into and entered a building occupied as a garage and stole and took therefrom an automobile and rugs (record, p. 8).

In this connection, we call this honorable Court's attention to an error which appears at page 10 of the record (original record, p. 18): The conclusion of the second information is erroneously inserted as a part of the said second warrant and part of the said warrant is left out. The conclusion of the said second warrant at page 10 of the record should read as follows:

"NOW THEREFORE, we command you, forthwith to take the said John McNamara and bring him before me, the said Commissioner, at my office, in the Post Office Building, in the City of New York or before the nearest Justice, Judge or Commissioner in the District in which the said John McNamara is apprehended, authorized to act in proceedings for the extradition of fugitives from a Foreign Government as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said John McNamara may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified together with a copy of all the proceedings to the Secretary of State, that a warrant may issue for his surrender pursuant to the said treaties.

"WITNESS my hand and official seal this 29th day of January in the year 1912.

(Seal)

JOHN A. SHIELDS

"U. S. COMMISSIONER for the Southern District of New York and a Commissioner duly authorized by the District Court of the United States for the Southern District of New York to act as Commissioner under the laws of the United States concerning the extradition of fugitives from the Justice of Foreign Governments, under a treaty or convention between the United States and any Foreign Government."

After the demanding government's case had been closed upon the second warrant charging the burglarious entry into the said garage, appellant called a number of witnesses to establish that at the time of the commission of the alleged burglary he was in and about the County of New York, and not at New Westminster. Thereafter the demanding government offered evidence in rebuttal, and the proceeding was closed.

The Commissioner decided that a case of probable cause had been made out against the appellant on the charge of burglarizing the said garage at New Westminster, and committed the appellant to the custody of the United States Marshal for the Southern District of New York until a warrant for his arrest should issue upon the said charge (record, p. 110).

Appellant duly filed his petition for writs of *habeas corpus* and *certiorari* on the 27th day of April, 1912, and the said writs were duly issued out of the United States District Court for the Southern District of New York. Upon the return of the said writs argument was had, and thereafter

and on the 7th day of May, 1912, an opinion was rendered dismissing the said writs and remanding the appellant.

From the order entered upon the said opinion on the 9th day of May, 1912, this appeal is taken, pursuant to an order duly filed in the office of the Clerk of the District Court for the Southern District of New York on the 13th day of May, 1912.

### **Errors Relied Upon.**

It is respectfully contended that the Court below erred in dismissing the writ of habeas corpus because—

1. There is no legal evidence that (a) a crime has been committed, or (b) that the prisoner has committed the crime;

2. In the absence of any legal proof the Commissioner acted without jurisdiction in issuing the commitment;

3. Depositions unauthenticated as required by law were improperly admitted in evidence to establish the identity of the accused and the commission of the said alleged crime.



## ARGUMENT.

### POINT I.

**While a writ of habeas corpus does not perform the functions of a writ of error, the Court will nevertheless go behind the commitment to ascertain whether there was any legal evidence to give the Commissioner jurisdiction.**

The proceedings to extradite the appellant are based upon Section 5270 of the Federal Statutes, which provides for the surrender of persons charged with the commission of crimes therein specified if after a hearing the court "deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention;" and it is "provided further that such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged; and provided further that no return or surrender shall be made of any person charged with the commission of any offense of a political nature. If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial."

At the outset it is respectfully urged that while we realize that a writ of habeas corpus cannot per-

form the functions of a writ of error, it is nevertheless submitted that the Court will go behind the commitment to ascertain whether there was any competent evidence at all to give the Commissioner jurisdiction.

The two general propositions of law which govern extradition proceedings are:

(a) The law of the State where the alleged fugitive is apprehended must dominate.

*Pettit v. Walshe*, 191 U. S. 205, 217, 218.

*Wright v. Henkel*, 190 U. S. 41, 58, 61.

*In re Frank*, 107 Fed. 272.

U. S. v. *Greene*, 100 Fed. 941.

*In re Ezeta*, 62 Fed. 972, 981.

(b) There must be such competent evidence of probable cause as would justify a committing magistrate hearing a like proceeding in the State of New York in holding the alleged fugitive.

*Benson v. McMahon*, 127 U. S. 457.

*In re Herres*, 33 Fed. 165.

*Matter of Calder*, 2 Edm. Seld. Cas. (N. Y.) 374.

As was said in *Matter of Washburn* (syllabus), 4 Johnson Chancery (N. Y.) 106:

"The evidence to detain such fugitive from justice for the purpose of surrendering him to his government must be such as would be sufficient to commit the party for trial if the crime had been committed here."

Under the provisions of Section 207 of the Code of Criminal Procedure of the State of New York, if there is no sufficient cause to believe the defend-

and guilty of the alleged crime the magistrate must order him to be discharged.

While under the latest decisions of this Court it will not review the weight or the effect of the evidence, it will, upon writs of habeas corpus and certiorari, pass upon the question of whether there was any legal evidence upon which the Commissioner has acted. As was said by this Court in *Terlinden v. Ames*, 184 U. S. 270, at page 278:

"The statute in respect of extradition gives no right of review to be exercised by any court or judicial officer, and what cannot be done directly cannot be done indirectly through the writ of habeas corpus. The court issuing the writ may, however, inquire and judge whether the Commissioner acquired jurisdiction of the matter, by conforming to the requirements of the treaty and the statute; whether he exceeded his jurisdiction; and whether he had any legal or competent evidence of facts before him on which to exercise a judgment as to the criminality of the accused, but such court is not to inquire whether the legal evidence of facts before the Commissioner was sufficient or insufficient to warrant his conclusion." (*Blatchford, J., In re Stupp*, 12 Blatchf. 501; *Ornelas v. Ruiz*, 161 U. S. 508.)"

We, therefore, in support of this point shall not go at any greater length into the testimony adduced by the demanding government, its contradictions and improbabilities, than is necessary to point out that there is no legal or competent evidence at all to establish that there is probable cause to believe this appellant is guilty of the crime charged, and hence that the Commissioner acted wholly without jurisdiction.

As we have demonstrated, *supra*, it is now well settled that the laws of the State where the fugitive is apprehended, and not the Acts of Congress, are to govern in hearings upon applications for extradition. We should therefore consider the question as to what would be sufficient evidence to hold an accused for trial by a committing magistrate in the State of New York where the charge is the commission of the crime of burglary.

So far as our present argument is concerned, we may assume the truth of the demanding government's entire case, and therefore but a brief summary of the facts will suffice. In this connection we respectfully call this honorable Court's attention to the fact that appellant has been discharged upon the first warrant, charging him with burglariously entering the New Westminster branch of the Bank of Montreal, and has been held only on the warrant charging the burglarious entry into the garage of one Trapp. We have incorporated the first warrant in the petition for a writ of habeas corpus so that this Court will have before it a history of this unusual and remarkable proceeding.

The testimony in connection with the second charge, if we assume it to be true, establishes the following:

Early in the morning of September 15, 1911, an automobile which belonged to one Trapp and which was kept in a garage near the said Trapp's house in the city of New Westminster, Dominion of Canada, was found by one of Trapp's sons a short distance away from the house, in such a condition that it could not be operated (record, p. 127 c). The automobile had been in the garage the night before, but in some unexplained way had been rolled out

open the street. The depositions are very vague as to whether or not the doors and windows of the garage were closed, and it appears that there was a repair pit in the floor of the garage which ran underneath one of the walls of the building, so that ingress and egress could be had directly from the outside by any person familiar with its situation (record, pp. 120, 124, 137). Neither of the locks on the doors of said garage showed any sign of having been forced (record, p. 127).

One of the sons of the owner of the garage, Stanley V. Trapp, states that when he left the garage between seven and eight p. m. on the evening of September 14, 1911, to the best of his belief the front door was closed and locked and the side door was closed (record, p. 124).

Another son, Thomas D. Trapp, states that to the best of his recollection he was not in the garage after eleven o'clock of the night of the 14th of September, and that at that time the automobile was in the garage. He does not state whether or not the doors were closed or locked at that time (record, p. 127).

Stanley V. Trapp also states that it was an easy matter for anyone to gain entrance to the garage by crawling under the building and up through the repair pit, and there was a window in the garage which could not be fastened, and access to the garage might have been obtained in that way (record, p. 128).

At the time the automobile was found on the street he examined it and found the spark coil disarranged, the air throttle used in connection with the carburetter closed and no switch plug in place. He did not observe anything wrong with the locks

on the door of the garage or any indications that the same had been forced (record, p. 129).

There were several depositions offered containing statements that appellant had been seen in and around the city of New Westminster on a few occasions preceding the commission of the alleged burglary, and one witness, Donald Ferguson, testified upon the hearings in this proceeding that he had seen this appellant and several other figures whom he could not describe standing in front of Frapp's automobile, after it had been rolled down the street, on the morning of September 15, 1911 (record, pp. 18, 19).

In his own behalf, the appellant called a number of eminently respectable witnesses, including ex-officials of the States of New York and New Jersey, to show that at the time of the commission of the alleged burglary he was in and around the City of New York (record, pp. 30-75).

For the purpose of our argument here, however, as we pointed out above, we are assuming the truth of the demanding government's testimony, and are considering the relevancy and competency of that testimony alone. We earnestly contend that, assuming all this testimony to be true, there was no legal or competent evidence to give the Commissioner jurisdiction, in that there was no legal or competent proof to establish probable cause that this appellant was guilty of the offense charged, within the meaning of Section 5270 of the Federal Statutes.

Since the law of the State of New York must dominate, we should consider whether a similar finding by a committing magistrate in the State of New York would be upheld. Can a magistrate

hold a prisoner upon mere suspicion or speculation, or must there be some competent legal proof to establish two elements: first, that a crime has been committed, and second, that the accused is the person who committed it?

In the State of New York the cases have laid down a rule similar to that in this Court, *i. e.*, that while the courts will not review the magistrate's finding on the question as to the amount of evidence, they will review and determine whether the magistrate has jurisdiction, and the prisoner will be discharged unless there is some competent legal proof to establish probable cause to believe him to be guilty of the offense charged. In *People v. Wells*, 57 App. Div., 140, the Court laid down the rule as follows, at page 142:

"When the defendant is brought before the magistrate he is entitled to be informed of the charge, the depositions taken are to be read, the deponents may be examined, and other witnesses may be called. The testimony taken must be reduced to writing and preserved. After hearing the proofs, if it appear that a crime has been committed, and there is sufficient cause to believe the defendant guilty, the magistrate must endorse on the depositions and statements, if any, an order signed, to the following effect:

'It appearing to me by the within depositions (and statement, if any), that the crime therein mentioned (or any other crime according to the fact, stating generally the nature thereof) has been committed and that there is sufficient cause to believe the within named A. B. guilty thereof: I order that he be held to answer to the same.'

"Thus, such authority of a magistrate can only be exercised if it appears (1) that a crime has been committed, and (2) there is sufficient cause to believe the defendant guilty upon the proofs. He has no arbitrary power. He is not like the French king of old, free to issue a *lettres de cachet*. He is a magistrate who must act with jurisdiction. And he has no jurisdiction until it be made to appear by evidence that a crime has been committed, and there is sufficient cause to warrant the belief that the defendant committed it. If his commitment is final in the sense that the proceedings preliminary cannot be scrutinized at all, there is absolute power vested in a committing magistrate that would wake envy in the shade of Charles of England."

And at page 148 the Court continues:

"If the mere commitment were conclusive, then the writ would be largely shorn of its strength. The mere return of the magistrate would make his *ipse dixit* final, no matter how absurd, or wicked, or wanton, his determination, when tested by the facts before him, might be. To hold this would be to travel backwards into another century, and to undo the principles of the law and the statutes."

Church (Hab. Corp., p. 319), cites the pithy example stated by GRUBB, J., in *Ex parte Jenkins*, Fed. Cas. No. 7259:

"A. Tells B. that he has seen C. kill D. B. runs off to a justice, swears to the murder boldly, without any knowledge of the facts and takes out a warrant for C. who is arrested and imprisoned in consequence thereof. C. prays for a habeas corpus, and shows that he was the Sheriff of the County, and hanged D. in pursuance of a legal warrant. If a court could not discharge a prisoner in such a case



because the warrant is regular on its face, the writ of habeas corpus is of little use.

"The function of the court is not to review the preliminary examination in order to decide the question anew, or to supplant the examination of the magistrate by its own examination, but to ascertain whether the magistrate had jurisdiction to commit the prisoner."

In another case involving the same question Judge Gaynor, writing the opinion, said:

"The question is one of jurisdiction in the magistrate. The jurisdiction of the magistrate is limited. They may not arbitrarily commit one to answer a charge of crime. If an accused demand an examination the magistrate may not commit to answer to a court having cognizance of the crime unless it appear that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof. If there is no such evidence then the magistrate is without jurisdiction to commit him."

*In re Henry*, 35 N. Y. Supp., 210.

And so the Court of Appeals in *People ex rel. Perkins v. Moss*, 187 N. Y., 410, said, page 418:

"If the magistrate issued the warrant of arrest without sufficient evidence in the particular case, the process is a nullity. The question always must be whether the magistrate acquired jurisdiction to cause an arrest of the person, and the court, upon the habeas corpus proceedings, will look back of his warrant and see if the facts stated in the depositions of the prosecutor and his witnesses support his warrant. \* \* \*

If they (depositions) did not furnish reasonable and just ground for a conclusion that the crime charged had been committed and

that the defendant committed it then jurisdiction was lacking to hold the prisoner in custody for any time."

And on page 424 of the same case the Court said:

"They showed that the design to injure, the motive to despoil the company, the wrongful purpose were all lacking in the information which was laid before the magistrate and upon the warrant was issued. This being so the act of the magistrate was wholly without jurisdiction and the warrant and all proceedings under it were absolutely void."

In *ex parte Swartwout*, 4 Cranch, 75, MARSHALL, C. J., said:

"I understand the clear opinion of the court to be (if I mistake my brethren will correct me) that it is unimportant whether the commitment be regular in point of form or not; for this court, having gone into an examination of the evidence upon which the commitment was grounded, will proceed to do that which the court below ought to have done."

## POINT II.

**There is no legal or competent evidence in the case at bar to show that a crime has been committed, or that the appellant committed the crime.**

The evidence offered by the demanding government in support of the two separate charges—  
(a) of feloniously breaking into and entering the branch of the Bank of Montreal

and (b) of feloniously breaking into and entering Trapp's garage was so commingled and intermixed in its presentation to the Commissioner, in that the second proceeding was commenced before the first was finally determined, that we deem it necessary at this point to give a short history of the first proceeding to aid the Court to a better understanding of the facts and circumstances which surround the entire case.

This appellant, a citizen of the United States, was arrested January 8, 1912, upon an absolutely groundless charge. When he was arraigned in the Magistrates' Court and discharged with the consent of the District Attorney of the County of New York, on January 11, 1912, he was rearrested, upon a warrant based entirely on information and belief, charging him with breaking into and entering the branch of the Bank of Montreal located in New Westminster, Canada, and stealing therefrom the sum of \$271,000. After a motion had been made to dismiss this warrant at the conclusion of the demanding government's case, which was only put in after a long series of delays due to the absence of depositions, appellant was arrested upon a third charge of breaking into and entering Trapp's garage and taking therefrom an automobile.

When subsequently the motion to dismiss the bank burglary charge was granted by the Commissioner upon the ground that the testimony was too vague and unsatisfactory, appellant continued to remain in jail under the new warrant, and has since been held thereunder without bail pending the granting of extradition upon the charge of breaking into and entering the garage.

In view of the developments since this proceeding was commenced, it is evident that this last mentioned charge against the appellant was made with the very idea in mind that he was to be discharged upon the bank burglary charge, which the demanding government knew must happen. It is a very significant fact in this connection that even after the bank burglary charge had been dismissed, all the parties in interest remained exactly the same. Counsel for the demanding government still contended for the return of the appellant; the Finlerton Detective Agency, which is employed by the Bank of Montreal, and not by the owner of the automobile, assisted the demanding government upon the second charge; and the learned and exceedingly resourceful counsel who had been employed by the Bank of Montreal to watch after its interests on the bank burglary charge continued upon the garage burglary charge to assist counsel for the demanding government, even after the Bank of Montreal's case had been dismissed and the appellant discharged upon said warrant.

The evidence adduced upon the various hearings is not a whit less remarkable than the motive behind this prosecution. The demanding government, in brief, would have us attach credence to this preposterous situation: That four or five men rode in an automobile about two o'clock in the morning of September 15, 1911, from Vancouver to New Westminster, a distance of about twelve miles, for the purpose of breaking into the Bank of Montreal and stealing therefrom a large sum of money; that they left their automobile near the Bank, broke into it and stole \$271,000 in gold and bank notes, after

gagging and tying the janitor of the Bank, whose deposition, by the way, has not been produced by the demanding government upon any of these hearings; that some of this money so stolen was hidden at various places within a few blocks of the Bank; that the burglary of the bank was discovered at the latest about a quarter before six in the morning; that the burglars fooled around a garage two blocks from the scene of the burglary at least fifteen minutes after the burglary of the bank had been discovered, that is, until about six a. m., in broad daylight, trying to get an automobile to work without a switch plug notwithstanding the fact that they certainly must have known that a switch plug was a necessary adjunct to the propulsion of an automobile, since they ran another automobile that morning from Vancouver and that they rolled this machine from the garage down the street and left it standing there; that they then walked to where the machine in which they had come was waiting, got in and rode off to Vancouver; and that the witness Ferguson was walking along Royal Avenue, on which the bank is situated, about a quarter before six on that morning, at the very time the burglary of the bank was being discovered, and notwithstanding the excitement attendant upon said discovery, passed within a short distance of the bank and went on two blocks to Trapp's garage, where he saw the alleged burglars of the bank and garage still standing.

In all fairness we earnestly contend that the foregoing is the ultimate analysis of this case.

As a result of the confusion incident to the presentation of two separate extradition proceedings

at the same time, it is submitted that the Commissioner did not base his opinion in the second proceeding upon any competent evidence introduced therein, but that he was influenced by the great mass of illegal and incompetent testimony which had been injected into both proceedings.

*We cannot find any precedent for the hearing of two distinct and separate extradition proceedings at the same time, and it may well be doubted whether the Commissioner had jurisdiction to receive testimony in support of the second warrant, before the first proceeding had been concluded.*

It has been held time after time in the courts of the State of New York that magistrates may not arbitrarily commit a defendant to answer a charge of crime. We have quoted from some of these cases *supra*, and we do not think that this proposition of law will be controverted by the appellees.

Probable cause must exist to believe that a crime has been committed and that the defendant has committed it before he properly can be held for trial.

"Probable cause" as used in the Federal Constitution (Amendment IV), declaring that no warrant shall issue but upon probable cause, has been held to mean that there must be a probability that a crime has been committed by the person named in the warrant. Of this probability the court issuing the warrant must be satisfied by facts supported by oath. These facts must induce a reasonable probability that all the acts have been done which constitute the crime charged.

U. S. v. Bolling, 24 Fed. Cas. 1189-1192.

U. S. v. Tureaud, 20 Fed. 621-623-624.

9 Fed. Stat. Ann., 254, 255.

As was said in the case *Re George Macdonnell*, 11 Blatchford (C. C.), 170, at page 190:

"A fugitive is not to be surrendered upon slight grounds. There should be reasonable evidence, reasonable cause to believe, and, in conformity with the case last referred to, we might go further, perhaps, and say, that there should be such *prima facie* case made by proof, as, being submitted to the jury, and being found by them to sustain the charge would make it the duty of a court to sustain the verdict."

To the same effect is *Re Etc*, 62 Fed. 972, 982, where the Court holds:

"The evidence of criminality, to justify holding the accused for the action of the executive upon surrender, need not be such as would be required at the trial of the accused, but must be such evidence as ordinarily obtains at a preliminary examination, and amount to probable cause of his guilt; probable cause being such evidence of guilt as would furnish good reason to a cautious man, and warrant him in the belief that the person accused is guilty of the offense with which he is charged."

Upon the outline of the testimony given above it is obvious that there can be no probable cause, as it is judicially defined, to believe this appellant to have been implicated in any such series of occurrences which culminated as it is alleged in his breaking into the garage. There was absolutely not a scintilla of direct evidence produced to show either the burglary of the garage or that the appellant had any connection with any such burglary.

Leaving out of the question the incompetent evidence submitted by the demanding government, it was at best entirely circumstantial, and is subject to the same scrutiny and examination by this honorable Court as would be given it by an appellate court in the State of New York, reviewing the decision of a committing magistrate.

In conclusion, we earnestly contend that the demanding government has not brought itself within the limitation fixed by Article 10 of the Treaty of 1842, under which this proceeding is brought and which governs it, and which allows extradition in certain cases "provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed," and the judge or magistrate shall only commit the defendant for extradition if "on such hearing the evidence be deemed sufficient to sustain the charge."

No greater weight is to be given to the depositions introduced by the demanding government than if the same statements had been made orally by the deponents.

Can it be seriously contended that a prisoner would be held in the State of New York on evidence which shows that an automobile left in a garage in the evening had been found in a street the next morning? Here it also appears that the real intention of the demanding government is not to extradite the defendant on any such ridiculous charge, but is really for the purpose of trying him on a totally different and distinct charge which



the United States Commissioner has already held cannot be established by the demanding government.

The learned Court below in passing upon the writ of habeas corpus, based his opinion upon the fact that possession or apparent possession for a slight space of time, in the absence of other proof, might be sufficient to show that the defendant participated in the crime. We respectfully submit that the Court had in mind cases of larceny. It is of course the rule, that recent exclusive possession of a stolen article is some evidence that the possessor participated in the commission of the larceny, but here we have an entirely different situation. The appellant has been arrested upon a warrant charging burglary, not larceny; and any proof, no matter how strong, that appellant had possession of an automobile, is not competent proof that he broke into the garage from which the automobile may have been taken.

In a circumstantial case all the evidence must point to the defendant as having exclusive opportunity to commit the offense charged. The rules relative to conviction by circumstantial evidence were very succinctly stated in a recent opinion in the Court of Appeals of the State of New York in the case of *People v. Rzezicz*, 206 N. Y., 249, CHASE, J., quoting from a number of cases at page 269:

"Where evidence is of sufficient probative force a crime may be established by circumstantial evidence. In this case there is no direct evidence of the defendant's guilt. The testimony is wholly circumstantial. Where the principal circumstance urged from which to infer guilt is wholly based upon an underly-

ing circumstance or inference, the testimony is unsatisfactory.

"In *People v. Kennedy* (32 N. Y., 141, 146), Chief Justice Denio, speaking for this Court, says: 'Circumstantial evidence, I repeat, consists in reasoning from facts which are known or proved, to establish such as are conjectured to exist; *but the process is fatally vicious if the circumstances from which we seek to deduce the conclusion depends itself upon conjecture.*'

"In *People v. Harris* (136 N. Y., 423, 429), this Court say: 'All that we should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn and that that inference is the only one which can reasonably be drawn from those facts.'

"In *People v. Fitzgerald* (156 N. Y., 253, 258), this Court say: 'In attempting to prove a fact by circumstantial evidence there are certain rules to be observed that reason and experience have found essential to the discovery of truth and the protection of innocence. The circumstances themselves must be established by direct proof and not left to rest upon inferences. The inference which is to be based upon the facts and circumstances so proved must be a clear and strong logical inference, an open and visible connection between the facts found and the proposition to be proved.'

"'No inference being reliable which is drawn from premises which are themselves uncertain, whenever it is sought to establish a proposition by circumstantial evidence, the circumstances from which the inferences must be drawn must be themselves established by direct evidence, as if they were the very facts in issue, and must not be left to conjecture.' (Ency. of Evidence, vol. 3, p. 70.)

"Whenever circumstantial evidence is relied upon to prove a fact the circumstances must

be proved and not themselves be presumed. (Manning v. John Hancock Life Ins. Co., 100 U. S., 693.)"

"In *United States v. Ross* (92 U. S. 281, 283) the court say: 'They are inferences from inferences; presumptions resting on the basis of another presumption. *Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible.* No inference of fact or of law is reliable, drawn from premises which are uncertain. Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed. Starkie on Ev. (p. 80) lays down the rule thus: 'In the first place, as the very foundation of indirect evidence is the establishment of one or more facts from which the inference is sought to be made, the law requires that the latter should be established by direct evidence, as if they were the very facts in issue.' It is upon this principle that courts are daily called upon to exclude evidence as too remote for the consideration of the jury.'

"In *Lamb v. Union Railway Co.* (195 N. Y. 260, 266), this court say: 'It is a well-settled rule of law that you cannot base inference upon inference. (*O'Gara v. Eisenlohr*, 38 N. Y. 296; *Ruppert v. Brooklyn H. R. R. Co.*, 154 N. Y. 90.) *Every inference must stand upon some clear, direct evidence, and not upon some other inference or presumption.*

"When in a criminal action the People seek to prove a defendant guilty of the crime with which he is charged the courts allow testimony of all circumstances that may have a fair and legitimate influence in determining the question involved. In any case evidence of circumstances may be so remote as to have no legitimate influence in determining an issue. Such remote testimony tends rather to confuse and conceal the real issue and may result in im-

properly influencing the jury in determining the question presented to them. It is frequently said as we have quoted that inference cannot be based upon inference." (Italics ours.)

Thus, in the case at bar, we have the demanding government seeking to base inference upon inference and presumption upon presumption. Taking the fact of apparent possession of the automobile, counsel seeks to establish the presumption that the automobile was stolen by appellant, and upon the inference arising out of that bases the presumption that the garage was burglarized and that appellant had some connection therewith. If the warrant had charged larceny there might be some slight weight to his contention, but inasmuch as the charge is burglary, and burglary alone, the structure built upon this fallacious reasoning must fall. This specie of argumentation—for it is in no sense proof—is much more open to the criticism of being unfair as well as improper, where the evidence is taken *ex parte* and the defendant has had no opportunity to cross-examine the witnesses, as in the proceeding at bar, than it is where there has been a full trial.

We have gone at some considerable length into the question here involved, because we feel that there is real merit to it, and that, taking into consideration all the facts and circumstances in connection with the proceedings instituted by the demanding government to extradite this appellant, the order dismissing the writs of habeas corpus and certiorari should be reversed and the defendant discharged from custody.

### POINT III.

#### **Depositions improperly authenticated, and therefore incompetent, were erroneously introduced.**

Section 5 of the Act of August 3, 1882 (3 Fed. Stat. Ann. 90), provides for the authentication of depositions used upon an extradition proceeding as follows:

"That in all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title 66 of the Revised Statutes of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing, for all the purposes of such hearing if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper, or copies thereof, so offered, are authenticated in the manner required by this act."

The form of certificate used in the proceeding at bar is as follows:

"American Consular Service,  
Vancouver, B.C. Canada, January 27, 1912.

"I, David F. Wilbur, Consul General of the United States of America, at Vancouver, Province of British Columbia, Dominion of Can-

ada, hereby certify that the annexed papers, being the depositions of William Robert Stanton, George Greenwood and William H. G. Phipps and a true copy of the warrant to apprehend John McNamara, issued by Henry L. Edmonds, Police Magistrate for the City of New Westminster, B. C., Canada, the said copy being certified as such by A. J. Brine, District Deputy Registrar for the Westminster Registry, who is duly authorized as such, *proposed to be used upon an application for the extradition from the United States of John McNamara, charged with the crime of unlawfully breaking and entering the counting house of the Bank of Montreal in the City of New Westminster, British Columbia, Canada and stealing therefrom the sum of Two Hundred and Seventy One Thousand Dollars found therein*, are properly and legally authenticated so as to entitle them to be received in evidence *for similar purposes* by the tribunals of the Dominion of Canada, as required by the Act of Congress of August 3, 1882.

"In witness whereof I hereunto sign my name and cause my seal of office to be affixed this twenty-seventh day of January, 1912.

(Seal)

DAVID F. WILBER

Consul General of the United States of  
America, at Vancouver, B.C.  
Canada.

Fee \$2.00 U. S. gold, equal to \$2.00 local currency, paid by affixing stamp to this document.

DAVID F. WILBER,

Consul General of United States."

The depositions of the witnesses George Greenwood, William H. G. Phipps, Walter Halliday Cotton, William Robert Stanton and Gordon H. Williams, all being depositions certified by David

F. Wilber, Consul General of the United States at Vancouver, British Columbia, to be issued upon the hearing on the charge of breaking and entering the Bank of Montreal, and offered in evidence upon the said charge (record, pp. 4, 5), were subsequently improperly offered and received in evidence upon the entirely separate and different charge of breaking and entering Trapp's garage. This was duly objected to and an exception taken upon the ground that they were incompetent and improper and should not be received (record, pp. 13, 14, 15, 16)

As was pointed out at the time the objection was made, the Consul General certifies that these depositions are to be used upon the first charge and **not** upon the second one. It might be well that the witnesses would qualify their statements if they were aware that they were going to give testimony upon an application for the extradition of the relator on the present charge, about which apparently these witnesses knew nothing.

Each piece of documentary evidence offered by the agents of the foreign government in support of the charge of criminality should be accompanied by a certificate of the principal diplomatic consular officer of the United States resident in the foreign country from which the fugitive shall have escaped stating clearly that it is properly and legally authenticated, so as to entitle it to be received in evidence in support of the same criminal charge by the tribunals of such foreign country. (*In re Henrich*, 5 Blatchf., 414.)

In *In re McPhun*, 30 Fed. 57, it was said at page 60:

"The case of *Henrich*, 5 Blatchford 414, 415, 425, arose under the Act of 1860, and was very

carefully considered. The opinion, delivered by Shipman, J., was concurred in by Mr. Justice Nelson and Mr. Blatchford, J. (It was said (page 425): 'Each piece of the documentary evidence offered by the agents of the foreign government in support of the charge of criminality should be accompanied by a certificate of the principal diplomatic or consular officer of the United States resident in the foreign country from which the fugitive shall have escaped, stating clearly that it is properly and legally authenticated, so as to entitle it to be received in evidence *in support of the same criminal charge* by the tribunals of such foreign country.'")

So, too, in *Re Farez*, (7 Blatchf. C. C.), 345, pages 352, *et seq.*) BLATCHFORD, J., citing *Re Henrich* (*supra*) held:

"\* \* \* that papers of the character of those here presented are admissible under the Act of 1860 when properly authenticated; and that that Act intends to enlarge the class of documentary evidence which may be adduced in support of the charge of criminality, and, in addition to the depositions on which a foreign warrant of arrest may have issued, provides for the admission of any depositions, warrant, or other papers, or copies of the same, *which are authenticated in a certain manner*. Therefore, it is no objection to these papers, that they do not appear to have been papers on which a warrant of arrest was issued abroad against the prisoner. The only question is as to whether the papers are properly authenticated.

"The Act of 1860 provides, that the certificate of the principal diplomatic or consular officer of the United States, resident in Switzerland, shall be proof that any paper or other document, offered in evidence, is authenti-



ated in the manner required by that Act. The diplomatic or consular officer must state that the papers are authenticated, so as to entitle them to be received *for similar purposes* by the tribunals of Switzerland—that is, entitled to be received by the tribunals of Switzerland *for similar purposes for which the papers mentioned in the second section of the Act of 1848 are to be received, namely, for the purpose of being evidence of the criminality of the person apprehended.*

"The certificate, in this case, of the minister resident of the United States in Switzerland, Mr. Rublee, dated the 5th day of February, 1870, certifies, that 'the foregoing copies of the warrant, depositions and other papers are legally and properly authenticated, so as to entitle them to be received for similar purposes by the tribunals of the Swiss Confederation, and to be received by the said tribunals for the purposes and similar purposes mentioned in the second section of the Act of Congress entitled "An Act for giving effect to certain treaty stipulations between this and foreign governments, for the apprehension and delivering up of certain offenders," approved August 12th, 1848.' This certificate follows the language of the Act of 1860. The same objection that is made to this mode of certification was made to the certificate in the case of *In re Henrich*. The objection was there taken, that the certificate of the minister did not state explicitly that the paper was admissible by the tribunals of the foreign country in support of the charge of criminality, or as evidence of the criminality of the prisoner. From the report of that case it appears that the certificate stated, as this one does, that the paper was receivable for 'similar purposes.' On that subject, the Court, in that case, after referring to the Act of 1848, as stating that the purposes for which the documentary evidence is

made admissible are to support the charge of criminality, says that the Act of 1860 declares that the documentary evidence which it makes admissible is to be received for the same purposes mentioned in the second section of the Act of 1848—that is, *as evidence of the criminality of the prisoner*. It further says: ‘The meaning of the certificate is perfectly obvious, when considered in reference to its object, and in connection with the certificates of the Prussian officials. The latter declare it to be a valid piece of evidence *touching the charge of criminality, which it embraces and sets forth with particularity*.’ In the present case, the certificate of the minister refers to the papers as being legally and properly authenticated, so as to entitle them to be received for similar purposes by the tribunals of the Swiss Confederation. The authentication which is thus referred to by the minister, is a certificate made by the Chancellor of the Swiss Confederation. He certifies to the signature of the Chief of the State Chancery of the Canton of Berne in Switzerland and to the authenticity of the seal of such State Chancery. He adds: ‘I moreover certify, that Mr. Justin Brossard, President of the tribunal of the District of the Franches Montagnes, Canton Berne, Switzerland, is, according to the conditions of the actual legislation of that Canton of Switzerland, competent to institute penal examinations of the nature of the one which, conformably with the foregoing papers, was opened and carried on agreeably with the forms of legislation adopted in the Canton Berne, against Francois Farez, blacksmith, burgher of Epiquevez, Canton of Berne, and latterly established at Les Bois, as an innkeeper, in said Canton of Berne, for forgery, and the uttering of papers forged by him; that, in particular, the aforesaid Mr. Justin Brossard, in his said capacity of President of the tribunal of the District of

the Franches Montagnes, is legally authorized, and, in said District, the only judge competent, to admit complaints against crimes of the nature of those which Farez has committed, to issue warrants of arrest and to cause them to be executed, to hear witnesses, appoint experts and receive legal oaths; that, further, the interrogatories and opinions of experts here above reported by said Justin Brosard would be amply sufficient to warrant the arrest of Francois Farez, and his committal for trial and judgment before the tribunals of the Canton of Berne, if he were in Switzerland, for the crime of forgery and uttering false papers, of which he is accused.' That is a certificate, in substance, that the interrogatories and opinions of experts contained in these papers, are receivable before the tribunals of the Canton of Berne, in Switzerland, as evidence of the criminality of Farez, because, it expressly states that they would be sufficient to warrant his arrest and committal for trial. If they are sufficient for that purpose, it necessarily follows that they must be receivable in evidence on the question of his criminality. Taking the certificate of the Minister and the Chancellor together, there is a substantial compliance with the Act of 1860. And, even if the certificate of the Chancellor is to be regarded as speaking only of the interrogatories and the opinions of experts as being sufficient to warrant the arrest of Farez and his committal for trial, and as not referring to the complaints and the depositions (which form part of the papers) of the parties whose names were forged, still the certificate of the minister, which covers, by name, 'the warrant, depositions and other papers, covers the complaints, the depositions, the interrogatories, the opinions of the experts, and their report, and all the other documents. Therefore, on

the certificate of the minister, by itself, there is a sufficient compliance with the Act of 1860, irrespective of anything that is found in the certificate of the Chancellor.

"The further objection was taken, that each one of these papers ought to have been certified by itself. But I think that these papers form substantially one proceeding and one document. Each paper refers to the papers which precede it, and they are all as much connected together as are the papers which form the record in a suit in a Court in the United States. *All of them are proceedings before the same magistrate in the same tribunal and relate to the same transaction, and I think they are all properly certified as one paper, and were properly admitted in evidence.*" (Italics ours.)

*In re Benson*, 30 Fed. 649, LACOMBE, J., held, at page 654:

"The relator contends that the documentary evidence submitted was not accompanied by a certificate of the principal diplomatic or consular officer of the United States resident in Mexico, stating clearly that it is properly and legally authenticated so as to entitle it to be received in evidence *in support of the same criminal charge* by the tribunals of Mexico. The certificates are undoubtedly defective."

In the last-mentioned case the fault was remedied by competent and sufficient oral testimony.

In the case at bar no additional testimony as to the authentication was, or could be, offered. The certificate here does not state clearly "that it is properly and legally authenticated, so as to entitle it to be received in evidence in support of the same criminal charge" by the tribunals of the Dominion

of Canada. The same charge would, of course, be the breaking into and entering of Trapp's garage, whereas Consul General Wilber's certificate states affirmatively that the depositions are proposed to be used upon an application for extradition upon the charge of unlawfully breaking and entering the counting house of the Bank of Montreal, and are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Dominion of Canada.

It follows, therefore, that the commitment of the appellant herein is based, at last partly, upon improper and incompetent testimony.

### **CONCLUSION.**

We believe that we have successfully demonstrated that the series of proceedings which culminated in the present one are extraordinary and unusual, to say the least, and we respectfully submit that before a citizen of the United States is to be apprehended, deprived of his liberty and sent 3,000 miles away from his residence as a prisoner to stand trial upon a criminal charge in a foreign nation, the greatest caution should be exercised.

Where it appears from the proceedings that some other and underlying purpose is to be subserved by the extradition than the trial of the defendant for the particular offense alleged in the warrant, this Court should not lend its assistance. As was said in *Grin v. Shine*, 187 U. S. 181 at page 184:

"Good faith towards foreign powers with which we have entered into treaties of extradition, does not require us to surrender persons charged with crime in violation of those well

settled principles of criminal procedure which from time immemorial have characterized Anglo-Saxon jurisprudence. Persons charged with crime in foreign countries, who have taken refuge here, are entitled to the same defenses as others accused of crime within our own jurisdiction. \* \* \*

"Care should doubtless be taken that the treaty be not made a pretext for collecting private debts, wreaking individual malice, or forcing the surrender of political offenders. \* \* \*

*A fortiori*, if it appears that the defendant is a citizen of the United States and is not a foreigner seeking shelter here, every protection of law should be afforded him, and the demanding government should establish that in good faith it has commenced criminal proceedings and that there is probable cause to believe the defendant to have committed some crime within the jurisdiction of the demanding government, before he should be surrendered.

It may well be argued where a citizen of another country who is accused of crime seeks a haven here, if that country makes demand for his return, charging him with crime, that we should not strain to hold him here or permit him to interpose technical objections. It is in the interest of this country, and the welfare of the people demands that we exclude from our shores not only criminals but all other undesirable immigrants; but should we surrender one of our own citizens because he is alleged to have committed some crime in a foreign country, without first ascertaining by orderly and well-established methods of procedure whether in fact a crime has been committed, and that there is probable cause to believe the person whose extradition is sought to have committed it?

Are we obliged to surrender everyone against whom a mere complaint is lodged by some foreign government without applying the ordinary legal tests that we would apply to determine whether one charged with commission of crime in this country should be held for trial or not?

Should we allow the treaty to be made a pretext for wreaking individual malice conceived out of some erroneous idea as to the commission of another offense?

The fundamental right of every citizen is that he is entitled to protection. If this protection be not given him in his time of need, then this right is violated.

If this ridiculous charge of breaking into Trapp's garage had been offered alone, this appellant might well have gone across the continent to face trial under the procedure of another government, but he knows, and the demanding government knows, that this powerful institution, the Bank of Montreal, with its governmental connections, which has lost the tremendous sum of \$271,000, is straining every energy to find a victim and is making every effort to compel this defendant's extradition, notwithstanding his discharge under the first proceeding.

**For the reasons above urged, the order of the Court below should be reversed and the prisoner discharged.**

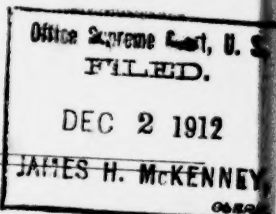
Respectfully submitted,

GEORGE GORDON BATTLE

Counsel for Appellant.







# Supreme Court of the United States.

OCTOBER TERM, 1912.

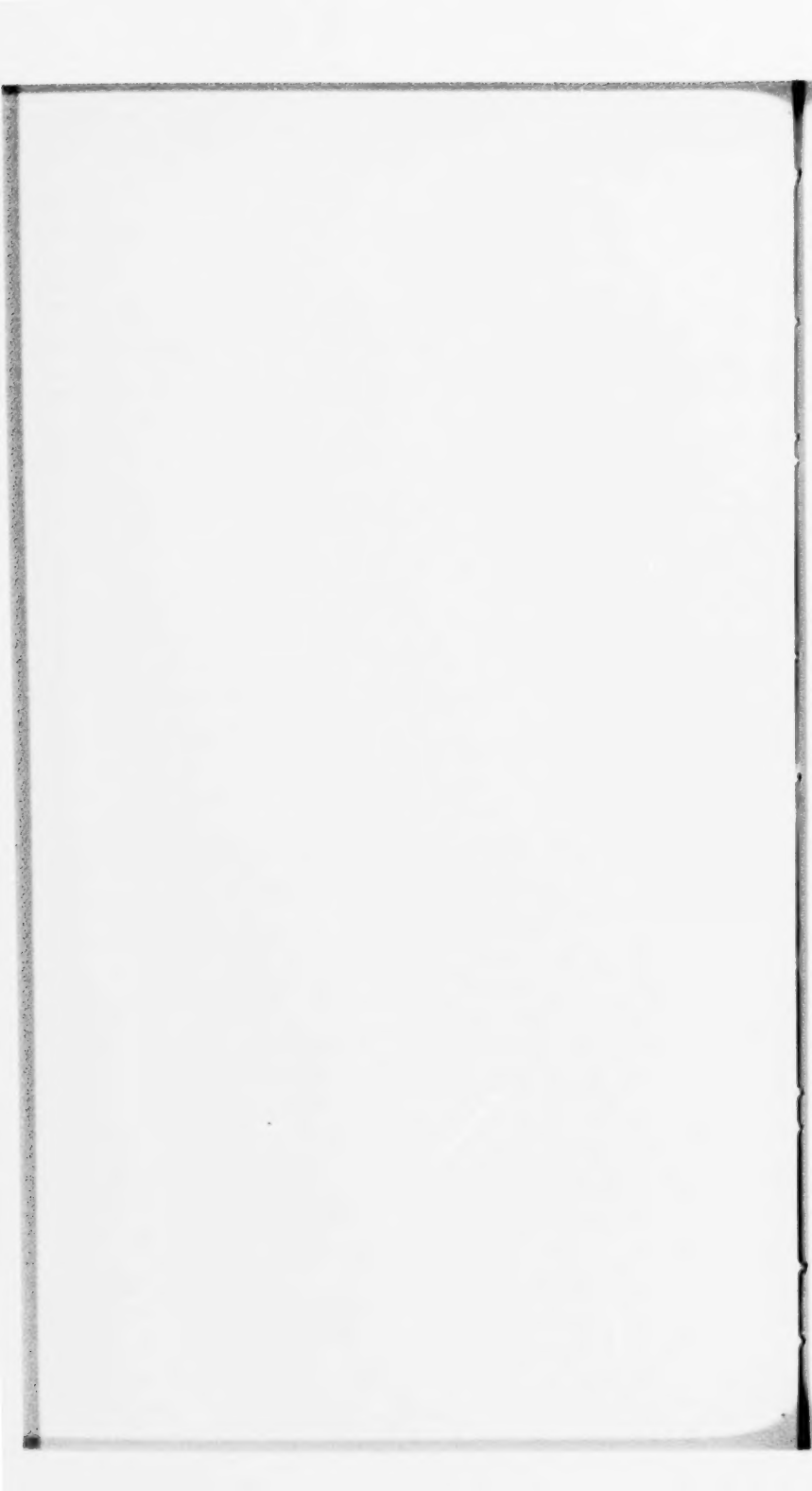
No. 687.

JOHN McNAMARA,  
*Appellant,*  
*vs.*

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE  
SOUTHERN DISTRICT OF NEW YORK, ET AL.

BRIEF FOR HIS BRITANNIC MAJESTY'S  
CONSUL-GENERAL AT THE PORT  
OF NEW YORK, Appellee.

CHARLES FOX,  
*Of Counsel for Appellee,*  
*H. B. M. Consul-General.*



# Supreme Court of the United States,

OCTOBER TERM, 1912.

No. 687.

JOHN MCNAMARA,  
Appellant,

*vs.*

WILLIAM HENKEL, United States  
Marshal for the Southern Dis-  
trict of New York, *et al.*

## **BRIEF FOR HIS BRITANNIC MAJESTY'S CONSUL-GENERAL AT THE PORT OF NEW YORK, APPELLEE.**

On an appeal from an order of the District Court of the United States for the Southern District of New York, dismissing Writs of Habeas Corpus and Certiorari.

### **Statement.**

In proceedings instituted under the Treaties for Extradition between the United States and Great Britain the appellant upon the charge of having committed a burglary in New Westminster, British Columbia, was committed by the Commissioner before whom the proceedings were pending, who deemed the evidence sufficient to sustain the charge, until a warrant for his surrender should issue or he should be otherwise dealt with according to law (p. 40).

The complaint upon which the warrant was issued was made January 29th, 1912, by the Senior Vice-Consul of Great Britain at the Port of New York, accused the appellant with on or about the 15th day of September, in the year 1911, at New Westminster in British Columbia, in the Dominion of Canada, and within the jurisdiction of His Britannic Majesty, having committed the crime of burglary, "to wit: did on or about the 15th day of September, 1911, at New Westminster aforesaid, feloniously break into and enter a building occupied as a garage by one J. Trapp and steal and take therefrom an automobile and rugs belonging to and the property of said J. Trapp" (p. 8). This complaint was made upon information and belief, and the complaint states: "that defendant's information and belief are based on a message received this day by telegraph by the British Consul-General in New York from the Attorney-General of the Province of British Columbia, which message also states that a warrant has been issued in New Westminster for the apprehension of the said John McNamara, for the offense herein charged, and certified copies of the warrant and depositions are being forwarded." The warrant referred to in the message from the Attorney-General was issued January 26, 1912 (pp. 121, 122).

Upon the warrant (p. 9) issued upon this complaint the appellant was apprehended and arraigned before the Commissioner issuing the warrant, and he demanded an examination (p. 10), which was had, with the result that he was committed for extradition.

The deposition of Thomas J. Trapp (p. 120), introduced on behalf of the demanding Government, established that he was the owner of an automobile which was kept in a garage on Royal avenue, at New Westminster. That this automobile was in the garage on the night of September 14th, 1911, and on the morning of the day following (September 15th, 1911) the automobile was found on Royal avenue, not far from the entrance to the garage.

The deposition of his son, Stanley V. Trapp (pp. 124-

125), shows that on the night before, this garage was closed and in the morning the front door of the garage was found partly open (pp. 124, 125).

The deposition of Thomas D. Trapp (pp. 126, 127), another son of Thomas J. Trapp, shows that this automobile was in the garage at 11 o'clock on the night of the 14th of September (p. 127), that there was a means of entrance into the garage without forcing the locks of the doors, through a repair pit. That the garage is lighted by electric light when used at night. That when the automobile was not in use the switch plug was removed so the automobile could not be run.

Another deposition of Stanley V. Trapp (pp. 128, 129), was introduced in evidence, showing that the automobile was in the garage the evening of September 14, 1911, that on the morning of the 15th of September, 1911, at about quarter after eight, having been notified that the automobile was on Royal avenue, he went into the garage, found the automobile missing therefrom, and went into Royal avenue and found the automobile standing there, with the cover partly off, the cover of the spark coil and several of the electric wires forming part of the motive equipment of the said machine disarranged, some nuts loosened on the spark coils, the whole thing appearing as though somebody had been trying to arrange the electric wires so as to obviate the necessity of a spark plug.

That the spark plug was not in place, which is part of the mechanism of the machine, which would account for the manipulation of the wires referred to by him.

That there were plenty of foot marks around the front of the machine (p. 130), indicating that some person or persons had been endeavoring to get the mechanism to work in order that the automobile might be run by its own power.

The deposition of Alice Wise (p. 126), shows that between the hours of four and five on the morning of the 15th of September, 1911, she living in the house adjoining the garage, heard sounds coming from the garage, which

to her sounded like some heavy person moving or being moved inside of the garage, that she looked out of the window ; there was no light in the garage and she could not see any person or persons, and concluded that it might be one of the Trapp boys returning from some trip and did not bother any further, although it was customary for the Trapp boys when using the garage at night to turn on the electric light (pp. 126, 127).

The testimony of Donald Ferguson, a witness examined before the Commissioner, shows (p. 17) that about six o'clock on the morning of September 15th. 1911, he left his house to go to his work, that of a teamster, and on his way he passed through Royal avenue, and when approaching the Trapp garage saw Trapp's automobile in the street between forty and fifty feet towards Sixth street (p. 18) and saw a man in front of the automobile trying to crank it, and there were three other men on the side of the machine opposite to the witness, and he identified the appellant as the man he saw in front of the machine cranking it. That he noticed when he walked up to the garage new tracks where the automobile had been run on Royal avenue down Sixth street, and saw the automobile had been backed out of the garage and then down toward Sixth street (p. 19), and that when he reached Fourth street and turned and looked towards the garage, the appellant and the three persons who were with him were not there.

This testimony concluded the case for the demanding Government and a motion was made on behalf of the appellant for his discharge upon the ground that it was insufficient to sustain the charge. This motion was denied (p. 29).

The appellant by way of defense sought to establish an *alibi* and introduced testimony to show he was in the City of New York on the 16th day of September, 1911, and from this testimony it would appear that on the 15th day of September, 1911, there was a boxing exhibition or as some of the witnesses term it a prize fight, held at

the Madison Square Garden, in the City of New York; that the following witnesses Butler (p. 31), Gribben (p. 38) and Hohenthal (p. 44), testified that they met the appellant the day after this fight in a bar-room in New York and the subject of conversation was the fight of the night before.

Another witness Youmans, saw the appellant in New York a couple of days before the fight of September 15th (p. 52).

The witness Skelton saw him at the West Shore Ferry house about the 12th or 14th of September, 1911 (p. 88).

The witness Frank J. Drummond identified a hat that was worn by the appellant (p. 76) as one that was sold in his store between the last of August and the 15th of September, 1911 (p. 78), but he did not identify the appellant as the one to whom the hat was sold.

Another witness Peter Cella who kept a hotel in Fort Lee, New Jersey, testified that he met appellant on the 10th day of September, 1911, at his hotel (p. 61), and saw him on the 13th day of September (p. 62), when the witness obtained for the appellant an automobile to be used by the appellant from a man named Schilling. That Schilling charged for the use of this automobile \$3, which the witness paid him and obtained from him a receipt, which is used as an exhibit in the case. (Deft. Ex. 4). This receipt was never given to the appellant or ever shown to him (p. 63). This automobile was described by the witness as carrying four passengers (p. 81), as did another automobile Schilling had. Schilling had two automobiles one described as the small one, or a "Cadillac," and the other a large one or a "Oldsmobile"; he also testified that on the 15th day of September, 1911, the appellant was at his hotel and had dinner there (p. 63), and he produced a check for the dinner in the waiter's handwriting, the date was in the bartender's handwriting who was the witness' brother and the name John McNamara appeared thereon. He testified that it was signed in the waiter's presence. There is no proof that this was appellant's signa-

ture to this check (p. 64), and this receipted dinner check was pushed back by the appellant and that the witness took it and preserved it and put it in an envelope with the other check (Ex. 2) (p. 72). He has no receipts for payments by anyone else (p. 72).

The demanding Government in rebuttal showed by the testimony of Gooderick (p. 93), that the small automobile of Schilling had a business body put on it, the first week in May, and certainly that business body was on it in June and then was sent to the place of business of the witness Kerwin (p. 96), and went into his possession early in the Spring of 1911, and after the early part of August, 1911, it never had been out of his possession. That disposes of one of the automobiles of Schilling.

The witness Kerwin, testified that the other car had a business body on it and he was positive that it was on it in August, 1911 (p. 99).

The witness, Speroni, testified that the larger car had a business body on it, until October, that the large automobile had a business body on it until two or three weeks after the Palisade Park was closed (p. 104).

The witness, Slabel, testified that the Oldsmobile had a business body on it after the Palisade Park closed (p. 107), and it was shown (p. 108) that the Palisade Park did not close until after September 24, 1911; it was also shown on September 19th, 1911, that the car with the business body on it of Schilling's was used by a firm of undertakers on September 19th, 1911 (p. 108).

The witness, Henrietta Carola, testified that she lived at Fort Lee next door to the Ryan House, visiting there two or three times a week, and that the first time she saw McNamara in Fort Lee was in November, 1911, and that he was introduced as coming from California (pp. 111, 112).

The deposition of Gordon H. Williams, a conductor, identifies appellant as the man who he saw on his car going from Vancouver to New Westminster on or about the 7th or 8th of September, 1911 (p. 114).

The deposition of William Robert Stanton, a police ser-



geant of New Westminster, identifies the appellant as being in New Westminster on two occasions, the first time early in the month of September, 1911, and on the second occasion two or three days prior to the 15th of September, 1911 (p. 116).

The deposition of George Greenwood identifies the appellant as a man who he saw on the 15th of September, 1911, in an automobile going from New Westminster to Vancouver (p. 117).

The deposition of George Frederick Russell Greenwood identifies him as a man he saw on the 15th of September, 1911, in an automobile on the road between New Westminster and Vancouver (p. 132).

The deposition of Frederick Ernest Stephens a butcher in Vancouver, British Columbia, identifies the appellant as a man who he saw in Vancouver after the 8th of September, 1911 (p. 138).

The deposition of Ethel Stebbins identifies the appellant as a man residing with the Deans in Vancouver until the end of September, 1911 (p. 139).

The deposition of Samuel Fletcher Bacon a contractor and builder states that he saw the appellant in Vancouver between the 13th day of September, 1911, and the 23rd day of September, 1911 (pp. 139-140).

While the proceeding, upon appeal here, was pending another proceeding for extradition against the appellant for burglarizing the Bank of Montreal in New Westminster was before the Commissioner, upon the last mentioned charge the appellant was discharged (p. 29).

The depositions of George Greenwood (p. 117) William H. P. Phipps (p. 134) and Walter Halliday Cotton (p. 136) were used on the bank charge and were offered in evidence in this proceeding and against the objection and exception of the appellant admitted in evidence (pp. 14, 15). The objection being that in the American Consul-General's certificate (pp. 115-133) he certifies that these depositions are proposed to be used on the application for the extradition of appellant charged with breaking and entering

the premises of the Bank of Montreal and they were incompetent and improper as evidence in support of the second charge of breaking into the garage.

The deposition of Gordon H. Williams (p. 14) also used on the bank charge was admitted in evidence against the objection and exception of the appellant (p. 92). The same objection being made that the Consul-General in his certificate certifies that the deposition was proposed to be used on the bank charge.

The Penal Laws of New York, Article 38, under the Title of Burglary contains the following ;

§ 400. Definitions.

*Break.*—The word as used in this article means and includes \* \* \* .

4. Entering a building or apartment by or through any pipe, chimney or other opening or by excavating, digging or breaking through or under the building or the walls of the foundation thereof.

§ 404. Burglary in the third degree :

A person who,

1. With intent to commit a crime breaks and enters the building or a room or any part of a building; or,

2. Being in any building commits a crime therein and breaks out of the same,

Is guilty of burglary in the third degree.

## POINTS.

### I.

#### **The appeal should be dismissed for want of jurisdiction.**

The portion of § 5 of the Act of March 3, 1891, allowing direct appeals to this Court pertinent to this appeal is contained in the following :

“ That appeals or writs of error may be taken from the District Courts \* \* \* direct to the Supreme Court in the following cases:

\* \* \* \* \*

In any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority, is drawn in question.”

To give this Court jurisdiction on a direct appeal from a District Court there must be a real, substantial dispute or controversy concerning the construction or constitutionality of a law of the United States or the validity or construction of a treaty made under its authority as provided in Section 5 of the Judiciary Act of March 3rd, 1891.

No such controversy or dispute exists on this appeal.

The assignment of errors makes no such claim and the questions involved on this appeal are directed entirely to the competency and sufficiency of the evidence upon which the appellant was held for extradition, and to the admission of evidence claimed to be improperly authenticated.

No construction of the Treaties of Extradition between the United States and Great Britain ~~is~~ necessary for the decision on this appeal.

There is no contention that the crime charged is not within the Treaty.

In order to come within the Act of 1891 the Treaty must be directly involved and upon its construction the rights of the parties must rest.

*Sloan vs. United*, 193 U. S., 614, and cases cited.

An appeal on the ground of a constitutional question must be real and substantial and not a mere claim in words.

*Kaufman & Son vs. Smith*, 216 U. S. R., 610.

## II.

**It is apparent that the appeal has been taken for delay and has no substantial merit and the order below should be affirmed.**

An appeal can be assumed to be taken for delay where the case is clearly involved by prior decisions. All the material questions raised on the appeal have been previously determined in this Court against the contentions of the appellant.

These decisions are referred to and cited under the third and fourth points.

## III.

**The Commissioner had jurisdiction to issue the warrant upon the complaint made before him.**

A complaint in an extradition case need not be as precise, technical and formal as an indictment, it is sufficient if it appears that a treaty offense is charged.

*Rice vs. Ames*, 180 U. S. R., 371.

*Re Sternaman*, 77 Fed. Rep., 576.

*Yordi vs. Nolte*, 215 U. S. R., 227.

In the last cited case, this Court says :

"The general doctrine in respect to extradition complaints is well stated by Judge Cox in *ex parte Sternaman*, 77 Fed. Rep., 516, as follows :

"The complaint should set forth clearly and briefly the offense charged. It need not be drawn with the formal precision of an indictment. If it be sufficiently explicit to inform the accused person of the precise nature of the charge against him, it is sufficient. The extreme technicality with which these proceedings were formerly conducted has given place to a more liberal practice, the object being to reach a correct decision upon the main question—Is there reasonable cause to believe that a crime has been committed? The complaint may in some instances be upon information and belief. The exigencies may be such that the criminal may escape punishment unless he is promptly apprehended by the representative of the country whose law he has violated. From the very nature of the case it may often happen that such representatives can have no personal knowledge of the crime. If the offense be one of the treaty crimes, and if it be stated clearly and explicitly, so that the accused knows exactly what the charge is, the complaint is sufficient to authorize the Commissioner to act. The foregoing propositions are, it is thought, sustained by the following authorities : *Re Farez*, 7 Blatchf., 345, Fed. Cas. No. 4,642 ; *Re Roth*, 15 Fed. Rep., 506 ; *Re Heinrich*, 5 Blatchf., 414, Fed. Cas. No. 6,369 ; *Ex parte van Hovan*, 4 Dill, 415, Fed. Cas. No. 16,859 ; *Re Breen*, 73 458 ; *Ex parte Lane*, 6 Fed., 34 ; *Re Herres*, 33 Fed., 165 ; *Castro vs. De Uriarte*, 16 Fed., 93 ; *Re Macdonnell*, 11 Blatchf., 79 Fed. Cas. No. 8,771."

If there was sufficient ground for the holding of the ap-

pellant by the Commissioner upon the evidence before him he is not to be discharged for defects in the original arrest or commitment.

*Yordi vs. Nolte, supra.*

The Senior Vice-Consul in his complaint states the source of his information and belief, is based upon a telegram received by his Consul-General from the Attorney-General of the Province of British Columbia, which message also stated that a warrant had been issued in British Columbia for the apprehension of the appellant for the offence charged in the complaint and that certified copies of the warrant and depositions were being forwarded.

The source of information is the highest legal officer of the Province within whose jurisdiction the crime was committed.

Can stronger justification for a complaint on information and belief in a proceeding of this character be required than a communication from the chief legal officer of the Province to the representative of his government at the place where the fugitive is found.

#### IV.

**There was legal and competent evidence before the Commissioner to justify the holding of the appellant for extradition.**

The depositions of Thomas John Trapp, Thomas D. Trapp, Stanley V. Trapp, Alice Wise and the testimony of Donald Ferguson were legal and competent evidence before the Commissioner, as to the criminality of the accused and if the crime had taken place in New York the evidence of these witnesses would have justified the com-

mitment of the appellant to await the action of the grand jury.

The Commissioner was not bound to accept the testimony on behalf of the appellant in support of the alibi : evidence on behalf of the demanding government raised an issue on this defence, and the matter is not subject to review in this Court.

A writ of habeas corpus in a case of extradition cannot perform the office of a writ of error.

If the Commissioner had jurisdiction of the subject matter, and of the person of the accused, and the offense charged is within the terms of the Treaty of Extradition, and the Commissioner in arriving at a decision to hold the accused, has before him competent legal evidence upon which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused, for the purposes of extradition such decision cannot be reviewed by a Circuit Court, or by this Court on habeas corpus either originally or by appeal.

*Elias vs. Ramirez*, 215 U. S. R., 398.

*Re Oleiza vs. Cortes*, 136 U. S. R., 334.

*Bryant vs. United States*, 167 U. S. R., 104.

~~*Anderson*~~ *vs. Ames*, 184 U. S. R., 270.

In *Benson vs. McMahon*, 127 U. S. Rep., 457, it was held :

“That the question to be determined is whether the commission of the crime alleged is so established as to justify the prisoner’s apprehension and commitment for trial, if the offense had been committed in the United States and the proceeding resembles in its character, preliminary examinations before a magistrate for the purpose of determining whether a case is made out to justify the holding of a person accused, to answer to an indictment.” \* \* \*

“As the accused is not now upon final trial, but the only question is whether he has committed an offense for which according to the Treaty he should be extradited to that country and tried.”

In the case of *Ornelas vs. Ruiz*, reported in 161 U. S. Reports, at page 512, Chief Justice Fuller, delivering the opinion of the Court, says :

“ Nor are we concerned with the question of the actual criminality of petitioners, if the Commissioner had probable cause for his action. It is enough if it appears that there was legal evidence on which the Commissioner might properly conclude that the accused had committed offences within the Treaty as charged, and so be justified in exercising his power to commit them to await the action of the Executive Department. The rule as to probable cause was thus laid down by Mr. Chief Justice Marshall, sitting as committing magistrate in Burr's case : ‘ On an application of this kind I certainly should not require that proof, which would be necessary to convict the persons to be committed on a trial in chief, nor should I even require that which should absolutely convince my own mind of the guilt of the accused ; but I ought to require, and I should require, that probable cause should be shown ; and I understand probable cause to be a case made out by proof furnishing good reason to believe that the crime alleged had been committed by the person charged as having committed it ’ (1 Burr's Trial, 11 ; *Benson vs. McMahon*, 127 U. S., 457 ; *In re Farez*, 7 Blatchford, 745 ; *In re Ezeta*, 62 Fed. Rep., 972, 981).

“ We are of opinion that it cannot be held that there was substantially no evidence calling for the judgment of the Commissioner as to whether he would, or would not, certify and commit under the statute, and that, therefore, as matter of law he had no jurisdiction over the subject matter ; and this being so his action was not open to review on *habeas corpus*.”



In *Glucksman vs. Henkel*, 221 U. S. R., 508, Mr. Justice Holmes in delivering the opinion of the Court says:

"It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For while, of course, a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. *Grin vs. Shine*, 187 U. S., 181, 184. See *Pierce vs. Creecy*, 210 U. S., 387, 405. We are bound by the existence of an extradition treaty to assume that the trial will be fair."

The depositions of Greenwood, Phipps, Cotton and Williams accompanied by the certificates of the Consul General of the United States although upon the face of the certificates it appearing that they were proposed to be used on an application for the extradition of the appellant for the crime of breaking into the Bank of Montreal, were properly admitted in evidence before the Commissioner on the charge of breaking into Trapp's garage.

The Act of August 3rd, 1882, c. 378, Sec. 522 St., 216 provides as follows:

"Sec. 5. That in all cases where any depositions, warrants or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title Sixty-six of the Revised Statutes of the United States, such depositions, warrants, and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by

the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant, or other paper or copies thereof, so offered, are authenticated in the manner required by this act."

This section makes evidence depositions or copies thereof, which are properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country is made proof that any depositions or warrants or other papers or copies thereof, so offered, are authenticated in the manner required by the act.

The Consul-General of the United States is the principal consular officer in the Province of British Columbia, and these depositions have his certificate attached that they are properly and legally authenticated so as to entitle them to be received in evidence as required by the Act of August 3rd, 1882.

The certificate as to these particular depositions does state that they are proposed to be used upon an application for the extradition from the United States of John McNamara charged with the crime of breaking and entering the premises of the Bank of Montreal, but this statement did not limit or confine the use of these depositions against the appellant to that particular charge; on any other charge against the appellant as to which they were material or competent they could be used against him under the provisions of the Act of August 3rd, 1882, they being properly and legally authenticated as required by that Act.

A certificate of the Consul-General could not limit their use to the Bank of Montreal case, if they were, as they were, competent on the charge of burglarizing Trapp's

garage, his certificate of their proper and legal authentication under Act of August 3, 1882, made them evidence against this appellant in any proceeding in which they were material or pertinent.

## VI.

**Possession of the automobile by the appellant as shown by the testimony of Ferguson in the absence of explanation by the appellant was sufficient to justify his commitment.**

“ Possession of fruits of a crime within a short time after the commission throws upon the possessor of the property the obligation of showing how he came by it.”

*People vs. Wilson*, 7 A. D., 326; affirmed  
151 N. Y., 403.

*People vs. Kipp*, 121 A. D., 293.

In *People vs. Jackson*, 182 N. Y. Rep., 66, on pages 77 and 78, the Court says:

“ In Greenleaf on Evidence (vol. 1 (16th ed.), p. 129), the rule of law governing this situation is thus stated : ‘ But possession of the fruits of crime recently after its commission is *prima facie* evidence of guilty possession, and, if unexplained either by direct evidence or by the attending circumstances or by the character and habits of life of the possessor, or otherwise, it is taken as conclusive. This rule of presumption is not confined to the case of theft, but is applied to all cases of crime, even the highest and most penal. Thus, upon an indictment for arson, proof that property, which was in the possession of the prisoner, was held to raise to prob-

able presumption that he was present and concerned in the offense. The like presumption is raised in the case of murder, accompanied by robbery, and in the case of the possession of an unusual quantity of counterfeit money.' "

In *Knickerbocker vs. People* (42 N. Y., 177), it was held :

"The proof of exclusive possession of the prisoner, recently after the theft, of the whole or some part of the stolen property, is sufficient when standing alone, to throw upon him the burden of showing how he came by it ; and if he fails to do so, warrant the jury in convicting him of larceny. And if the property was shown to have been taken by burglary or robbery, such possession, unexplained, is sufficient also to warrant a conviction of those crimes."

Recent possession of stolen goods, warrants the inference that the possessor is the thief, both because experience shows that usually the party so in possession is the thief, and because the knowledge of how he came into possession of the goods is generally exclusively his own.

*Griffen vs. Manice*, 166 N. Y., 194.

*Wilson vs. United States*, 162 U. S. R., 613.

## VII.

**The order of the District Court should be affirmed.**

CHARLES FOX,  
Of Counsel for Appellee,  
H. B. M Consul-General.

**OPINION**

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**McNAMARA *v.* HENKEL, UNITED STATES MAR-  
SHAL FOR THE SOUTHERN DISTRICT OF NEW  
YORK.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.**

No. 687. Argued December 4, 1912.—Decided January 6, 1913.

Under § 5270, Rev. Stat., if the committing magistrate has jurisdiction  
and the offense charged is within the treaty and there is legal evidence

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Argument for Appellant.

on which to exercise his judgment as to sufficiency of the facts to establish criminality for purposes of extradition, the decision of the magistrate cannot be reviewed on *habeas corpus*.

In this case there was competent evidence that the crime of burglary as defined by the law of the State where accused was arrested had been committed and extradition was properly granted under the treaties with Great Britain of 1842 and 1889.

Possession of the article stolen may tend to show guilty participation in the burglary, and so held in this case as to possession of an automobile.

Evidence should, if unexplained, be accorded its natural probative force.

*Habeas corpus* does not operate as a writ of error and mere errors are not subject to review, and so held as to an objection that depositions used in an extradition case were not properly certified.

THE facts, which involve the legality of an order of commitment for extradition, are stated in the opinion.

Mr. George Gordon Battle for appellant:

While a writ of *habeas corpus* does not perform the functions of a writ of error, the court will nevertheless go behind the commitment to ascertain whether there was any legal evidence to give the Commissioner jurisdiction.

The two general propositions of law which govern extradition proceedings are:

The law of the State where the alleged fugitive is apprehended must dominate. *Pettit v. Walshe*, 194 U. S. 205, 217; *Wright v. Henkel*, 190 U. S. 41, 58; *In re Frank*, 107 Fed. Rep. 272; *United States v. Greene*, 100 Fed. Rep. 941; *In re Ezeta*, 62 Fed. Rep. 972, 981.

There must be such competent evidence of probable cause as would justify a committing magistrate hearing a like proceeding in the State of New York in holding the alleged fugitive. *Benson v. McMahon*, 127 U. S. 457; *In re Herres*, 33 Fed. Rep. 165; *Matter of Calder*, 2 Edm. Seld. Cas. (N. Y.) 374; *Matter of Washburn*, 4 Johns. Ch. (N. Y.) 106; and see § 207, Code Crim. Proc. of New York; *Terlinden v. Ames*, 184 U. S. 270; *People v. Wells*,

57 App. Div. 140; Church, Hab. Corp., p. 319; *Ex parte Jenkins*, Fed. Cas. No. 7259; *In re Henry*, 35 N. Y. Supp. 210; *Perkins v. Moss*, 187 N. Y. 410, 418; *Ex parte Swart-out*, 4 Cranch, 75.

There is no legal or competent evidence in the case at bar to show that a crime has been committed, or that the appellant committed the crime.

The evidence offered by the demanding government in support of two separate charges—of feloniously breaking into and entering the branch of the Bank of Montreal and of feloniously breaking into and entering Trapp's garage—was so co-mingled and intermixed in its presentation to the Commissioner, in that the second proceeding was commenced before the first was finally determined, that the Commissioner had no right to receive the evidence at all, or to base an order in either proceeding upon it.

There is no precedent for the hearing of two distinct and separate extradition proceedings at the same time, and the Commissioner had no jurisdiction to receive testimony in support of the second warrant before the first proceeding had been concluded.

Probable cause must exist to believe that a crime has been committed and that the defendant has committed it before he properly can be held for trial. *United States v. Bolling*, 24 Fed. Cas. 1189-1192; *United States v. Tureaud*, 20 Fed. Rep. 621-623, 624; 9 Fed. Stat. Ann. 254, 255; *Re Macdonnell*, 11 Blatchf. 170, 190; *Re Ezeta*, 62 Fed. Rep. 972, 982; *People v. Rzezicz*, 206 N. Y. 249, 269.

Depositions improperly authenticated, and therefore incompetent, were erroneously introduced and allowed by the Commissioner. Section 5 of the act of August 3, 1882, 3 Fed. Stat. Ann. 90; *In re McPhun*, 30 Fed. Rep. 57, 60; *Re Farez*, 7 Blatchf. 345, 352; *In re Benson*, 30 Fed. Rep. 649, 654.



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Opinion of the Court.

*Mr. Charles Fox* for appellee.

MR. JUSTICE HUGHES delivered the opinion of the court.

John McNamara, the appellant, was arrested on the complaint of the British Senior Vice-Consul at the Port of New York charging him with committing the crime of burglary at New Westminster, British Columbia, in breaking into a building occupied as a garage and stealing therefrom an automobile and rugs. Examination was demanded, and after hearing the evidence submitted on both sides the United States Commissioner found probable cause and issued an order of commitment for extradition. Writs of *habeas corpus* and *certiorari* were then sued out upon the ground that the accused was restrained of his liberty without due process of law. The District Court dismissed the writs and this appeal is brought.

The question simply is whether there was any competent evidence before the Commissioner entitling him to act under the statute. The weight of the evidence was for his determination. The statute provides that if on the hearing, "he deems the evidence sufficient to sustain the charge," he shall certify the same to the Secretary of State and issue his warrant for the commitment of the accused pending surrender according to the stipulations of the treaty. Rev. Stat., § 5270. Under this provision, the rule is well established that if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offense charged is within the treaty, and the magistrate has before him legal evidence on which to exercise his judgment as to the sufficiency of the facts to establish the criminality of the accused for the purposes of extradition, his decision cannot be reviewed on *habeas corpus*. *In re Oleiza y Cortez*, 136 U. S. 330, 334; *Benson v. McMahon*, 127 U. S. 457, 463; *In re Stupp*, 12 Blatchf. 501;

*Ornelas v. Ruiz*, 161 U. S. 502, 508; *Bryant v. United States*, 167 U. S. 104, 105; *Terlinden v. Ames*, 184 U. S. 270, 278; *Grin v. Shine*, 187 U. S. 181, 192; *Yordi v. Nolte*, 215 U. S. 227, 232; *Elias v. Ramirez*, 215 U. S. 398, 407; *Glucksman v. Henkel*, 221 U. S. 508, 512.

Without setting forth in detail the facts appearing from the depositions and testimony before the Commissioner, it is sufficient to say that there was competent evidence that the crime of burglary as defined by the law of New York where the appellant was arrested (Treaty with Great Britain, 1842, Art. X, 8 Stat. 572, 576; Treaty of 1889, Art. I, 26 Stat. 1508, 1509; Penal Law (N. Y.), §§ 400, 404) had been committed by a breaking into the building in question with intent to steal the automobile there kept. It was shown that this took place between four and six o'clock on the morning of September 15th, 1911. The car was taken out of the building and rolled about forty feet down the street, where shortly before six o'clock on that morning, according to testimony, the appellant was seen standing in front of the car "trying to crank it;" "he was trying," said the witness, "to start the machine off." Three men, unidentified, were with him. On an examination of the car soon after, it was found that the cover had been removed from the spark coil and that several of the electric wires forming part of the motive equipment had been disarranged in an effort, apparently, to operate the car despite the absence of a switch plug.

The District Court held that this was evidence connecting the appellant with the crime upon which, in the light of the circumstances proved, the Commissioner was entitled to exercise his judgment. We agree with this view. *Wilson v. United States*, 162 U. S. 613, 619, 620. It is objected that while possession of property recently stolen may be evidence of participation in the larceny, the apparent possession of the automobile by the appellant

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Syllabus.

affords no support for a conclusion that he committed the burglary, the crime with which he was charged. The permissible inference is not thus to be limited. The evidence pointed to the appellant as one having control of the car and engaged in the endeavor to secure the fruits of the burglarious entry. Possession in these circumstances tended to show guilty participation in the burglary. This is but to accord to the evidence, if unexplained, its natural probative force. *Considine v. United States*, 112 Fed. Rep. 342, 349, 350; *Commonwealth v. McGorty*, 114 Massachusetts, 299; *Knickerbocker v. The People*, 43 N. Y. 177, 181; *Neubrandt v. State*, 53 Wisconsin, 89; *State v. Fitzgerald*, 72 Vermont, 142.

It is assigned as error that the Commissioner received in evidence certain depositions taken in British Columbia which were certified by the Consul-General of the United States as depositions proposed to be used upon an application for the extradition of the appellant upon another charge. We need not consider the sufficiency of this certificate, as the writ of *habeas corpus* does not operate as a writ of error and mere errors are not the subject of review. *Benson v. McMahon*, 127 U. S. 457, 461, 462; *Terlinden v. Ames*, 184 U. S. 270, 278. Irrespective of the depositions objected to, there was legal evidence on which to base the Commissioner's action.

*Affirmed.*

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